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**May 26 2026**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM OCONEE COUNTY  
Honorable Steven C. Kirven, Master-In-Equity

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Case No. 2019-CP-37-00143  
Appellate Case No. 2026-000245

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Rogert B. Thomas and Diane M. Thomas, ..... Appellants,

v.

Camala Hinkle f/k/a Camala H. Houck, Individually and as Trustee of the  
R. Larry Hinkle Revocable Trust dated July 10, 2014 and as Trustee of the  
Mary Hinkle Revocable Trust dated July 10, 2014, Benjamin E. Ferguson,  
Cheryl Ann Ward, Morgan Greer, Brady G. Ward, Daniel C. Polstra, and  
Karen L. Polstra, ..... Respondents,

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**INITIAL BRIEF OF APPELLANTS**

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## **STATEMENT OF ISSUES ON APPEAL**

1. Did the Master err in finding that a dock belonging to Roger and Diane Thomas was subject to general use by all of the owners of lots within the Foster Vaughan Subdivision and the neighboring Hinkle Property, including, “but not limited to, use during launching or trailering a boat at the Common Area ramp, boarding and off-boarding boat passengers, swimming, fishing, or just standing or sitting” where the parties agreed only that “the owners of the three (3) other non-lakefront subdivision lots shall have tie-up rights to the dock”?
2. Did the Master err in allowing property within the Foster Vaughan Subdivision to be subdivided to provide driveway access between a private, gated subdivision road and an unrestricted lot in an adjoining subdivision and in allowing the driveway to remain?
3. Did the Master err in awarding over \$300,000 in attorney’s fees to the Respondents in light of the declaratory and equitable claims asserted in this case, the results obtained, and the language of the parties’ agreement, which provides that “attorneys’ fees will be determined in the same manner as in a SC mechanics lien action”?

## STATEMENT OF THE CASE

This action is the third in a series of lawsuits relating to a small subdivision on the shores of Lake Jocassee (“Foster Vaughan Subdivision”). Roger and Diane Thomas (the “Thomases”) own one lot within the subdivision and the remaining defendants own the other five lots. In dispute here is a dock owned by the Thomases and attached to a lakefront parcel designated as “Common Area” (the “Thomas dock”) as well as issues surrounding whether an additional driveway can be installed and road access provided to connect this subdivision with Lot 15 in a larger, unrestricted neighboring subdivision.

The Thomases filed this action on March 11, 2019 against Camala Houck, n/k/a Camala Hinkle,<sup>1</sup> individually and as Trustee of the R. Larry Hinkle Revocable Trust dated July 10, 2014, Benjamin Ferguson, David Ward,<sup>2</sup> Mary Hinkle,<sup>3</sup> and the Vaughan Property Owners Association, Inc. (“POA”) on March 11, 2019, seeking declaratory and injunctive relief, including claims relating to access concerns. (Complaint, R. at \_\_\_\_). With respect to the access issues, the Thomases alleged that Defendants engineered an improper scheme to provide access from the Foster Vaughan Subdivision to Lot 15 in the neighboring Jocassee Acres subdivision (“Jocassee Acres”) by reconfiguring lots and constructing a driveway from Vaughn Road.<sup>4</sup>

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<sup>1</sup> Camala Hinkle is the daughter of the late R. Larry and Mary Hinkle.

<sup>2</sup> David Ward died on December 22, 2023. By order dated March 7, 2024, Cheryl Ann Ward as Successor Trustee of the David Eugene Ward Living Trust u/t/d November 2, 2023 was substituted for him. (Order, R. at \_\_\_\_). By consent order dated May 13, 2025, Cheryl Ann Ward, Morgan Greer and Brady G. Ward were substituted for Cheryl Ann Ward, as Successor Trustee of the David Eugene Ward Living Trust u/t/d November 2, 2023. (Order, R. at \_\_\_\_). For ease of reference, David Ward and his successors in interest are referred to in this brief as “Ward.”

<sup>3</sup> By stipulation dated March 9, 2022, Mary Hinkle was dismissed from the case. (Stipulation, R. at \_\_\_\_).

<sup>4</sup> Jocassee Acres is adjacent to and south of the Foster Vaughan Subdivision. The property restrictions applicable to Jocassee Acres expired in 2008, leaving that subdivision unrestricted. (Exs. 104, 105, R. at \_\_\_\_).

Defendants denied wrongdoing and asserted affirmative defenses and counterclaims. (Answer, R. at \_\_\_\_). Among other claims, they asserted that the Common Area was owned by all lot owners as tenants in common, that the dock was a fixture of the Common Area, and that they had the same rights to use the dock as they had to use the Common Area. The Thomases replied to the counterclaims on August 5, 2019. (Reply, R. at \_\_\_\_).

On January 28, 2020, the case was referred to the master in equity for Oconee County with authority to enter a final judgment. (Order, R. at \_\_\_\_).

On September 8, 2020, Camala Hinkle, Mary Hinkle, and the Vaughn Property Owners Association (the “Hinkle Defendants”) amended their answer and counterclaims to assert full use rights in the Thomas dock, subject to the exclusive use of the covered wet slip by the Thomases. (Amended Answer, Consent Order, R. at \_\_\_\_).<sup>5</sup> The Thomases replied on October 8, 2020. (Reply, R. at \_\_\_\_).

On August 5, 2022, the Thomases filed a motion seeking leave to amend their complaint and to join additional parties: (1) Camala Hinkle, as Trustee for the Mary Hinkle Revocable Trust dated July 10, 2014, (2) Larry Hinkle, and (3) Daniel and Karen Polstra. (Motion, R. at \_\_\_\_). Pursuant to an order dated October 19, 2022, the Thomases filed an amended complaint, which added the Polstras and the Mary Hinkle Trust as defendants and removed the POA. (Order, Amended Complaint, R. at \_\_\_\_). The amended complaint included claims seeking declaratory and injunctive relief barring Defendants from accessing Jocassee Acres by way of the Foster Vaughan Subdivision and declaring that the subdivision of certain lots within the Foster Vaughan Subdivision to facilitate that access was void. (Amended Complaint, R. at \_\_\_\_). The amended

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<sup>5</sup> The Hinkle Defendants dismissed their fifth and sixth counterclaims on September 24, 2021. (Notice of Dismissal, R. at \_\_\_\_).

complaint also sought a declaration that Defendants' rights to use the Thomas dock are limited to tie-up rights for the non-lakefront lots within the Foster Vaughan Subdivision. (Amended Complaint, R. at \_\_\_\_). Defendants Hinkle, Ferguson, and Ward filed answers and counterclaims claiming that the Thomas dock is a fixture of the common area, and that they have a corresponding right to full and equal use of the dock. (Answers, R. at \_\_\_\_). The Polstras answered but did not assert any counterclaims. (Answer, R. at \_\_\_\_).

The case was tried before the Master on October 15-17, 2024. At the commencement of the trial, the Hinkle Defendants, Ferguson, and Ward dismissed all of their counterclaims except those which related to the dock and attorney fees. (Tr. 189:7-190:19, R. at \_\_\_\_).

By order dated November 5, 2025, the Master ruled in favor of Defendants with respect to the Thomases' claims and Defendants' remaining counterclaims. (Order, R. at \_\_\_\_). In that order, the Master found that the Thomases own the Thomas dock, but Defendants have full rights to use the dock including, "but not limited to, use during launching or trailering a boat at the Common Area ramp, boarding and off-boarding boat passengers, swimming, fishing, or just standing or sitting" with the exception of the covered slip. The Master also found that there was nothing improper about the driveway or the creation of Parcels A and B. In addition, the Master awarded \$200,660.15 in attorney's fees to the Hinkle Defendants and awarded \$119,189.11 to the Ward Defendants.

The Thomases filed a timely motion to alter or amend on November 17, 2025. With respect to the dock, the Thomases urged the Master to reconsider the language of the parties' agreements and the implications running from the Thomases' ownership of the dock. On the subdivision and driveway issues, the Thomases sought reconsideration in light of the provisions of the applicable covenants and the underlying road easement. Lastly, the Thomases sought to alter or amend the

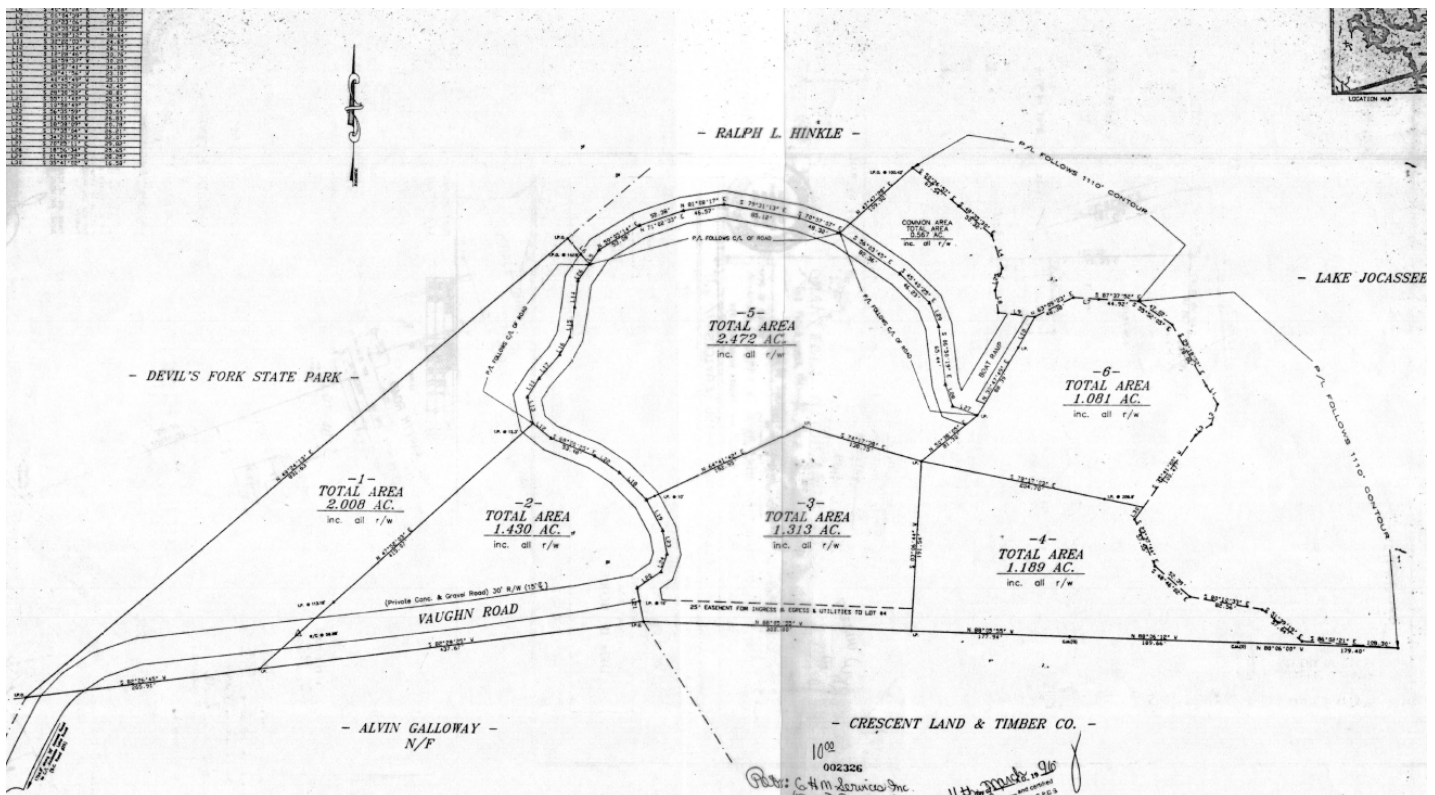
attorney's fee awards in light of the actual issues and determinations made in this case and the language of the attorney's fee provision in the parties' agreement. (Motion, R. at \_\_\_\_). The Master denied the motion on January 8, 2026. (Order, R. at \_\_\_\_). This appeal followed.



(Ex. 307 at 3, R. at \_\_\_\_).

In 1990, Vaughan sold Larry Hinkle a 1.08-acre lakefront lot (the “Hinkle Property”) and a non-exclusive access easement over Vaughn Road. (Exs. 210, 314, R. at \_\_\_\_). On March 17, 1994, Vaughan subdivided his remaining acreage into six residential lots (Lots 1 through 6), an access road (“Vaughn Road”), and a lakefront parcel designated as the “Common Area.” (Ex. 201, R. at \_\_\_\_).

As shown in the easement swap map above and the subdivision map below, Vaughn Road runs from Jocassee Lake Road and provides access for each of the lots within the Foster Vaughan Subdivision, the Common Area, and the Hinkle Property. (Ex.201, R. at \_\_\_\_). The portion of Vaughn Road that lies within the Foster Vaughan Subdivision is private and gated. Lots 1-3 and 5 do not have lake frontage. (*Id.*). The Foster Vaughan Subdivision is shown below:



(Ex. 201, R. at \_\_\_\_).

The Thomases purchased Lot 1 from Vaughan in 1994. (Ex. 317, R. at \_\_\_\_). That conveyance included an unrestricted fee simple ownership of the portion of Vaughn Road which crosses Lot 1, subject to a non-exclusive easement for ingress and egress in favor of the Hinkle Property and the other subdivision lots. (Tr. 77:11-18; Exs. 317, 201, 213, R. at \_\_\_\_). In addition, the Thomases were granted an undivided one-seventh interest in the Common Area. (Ex. 317, R. at \_\_\_\_). Lastly, the contract of sale between Vaughan and the Thomases required Vaughan to provide a dock on the Common Area with a slip assigned to the Thomases within one year of closing. (Tr. 77:22-78:6; Exs. 1401-02, R. at \_\_\_\_). When the Thomases bought their lot, there were no subdivision covenants in place.

## **II. The 2004 Lawsuit**

On January 20, 2004, Vaughan filed suit against the Thomases, alleging that the Thomases were in violation of alleged subdivision restrictions in connection with improvements to their property (the “2004 Lawsuit”). (Ex. 903, R. at \_\_\_\_). The Thomases denied those claims on the grounds that their property was not subject to any such restrictions and asserted counterclaims, including that Vaughan had breached his contractual obligation to provide a dock. (Tr. 89:13-22; Ex.904, R. at \_\_\_\_).

In hopes of getting around his clear breach of contract, Vaughan installed a salvaged and ultimately unusable dock (the “Old Dock”) on the Common Area around February 9, 2004, which was acquired by Larry Hinkle from the state surplus property office. (Tr. 90:12-93:25; Exs. 501, 1104, R. at \_\_\_\_). The Old Dock fell apart within three weeks of installation and disappeared before the settlement ending the 2004 Lawsuit. (Exs. 1104, 1105, 1302, R. at \_\_\_\_). While the 2004 Lawsuit was pending, Roger Thomas filed an application with Duke Energy to install his own dock on the Common Area. (Ex.502, R. at \_\_\_\_).

The 2004 Lawsuit settled at trial before the Hon. Cordell Maddox as embodied in a settlement read into the record on July 31, 2006 and a consent order dated October 31, 2006 (the “Maddox Order”). (Exs. 906-07, R. at \_\_\_\_). At the time of the settlement, the Thomases owned Lot 1, Vaughan owned Lot 2, and the Hinkles owned Lots 3- 6 and the Hinkle Property. (Ex. 1, R. at \_\_\_\_).<sup>6</sup>

The Maddox Order provided, in relevant part, as follows:

1. The [Thomases] shall pay the Plaintiff the sum of Fifteen Thousand and No/100 (\$15,000.00) Dollars.
2. The [Thomases] shall remove all dead trees from his property which may damage the adjoining property, utilities or road. Said work will be performed promptly and in a workmanlike manner so as not to disturb surrounding property.
3. The parties shall execute recordable restrictions for Foster Vaughn Subdivision as set forth in Exhibit A attached hereto.<sup>7</sup> The [Thomases’] home and boathouse shall be deemed acceptable in their present state.
4. The [Thomases] shall, at their own expense, repair the drive at the top of the boat ramp. The [Thomases] shall consult the Plaintiff regarding said repair.
5. The parties shall cooperate (including written withdrawal of objections if necessary) with the [Thomases’] boat dock permitting process. *Upon approval of the [Thomases’] application the [Thomases] shall build a boat dock attached to the common area. The boat dock may have a wet slip which will be exclusive to the [Thomases]. **The other three (3) non lakefront subdivision lot owners shall have tie up rights to this dock.***

(Ex. 907, R. at \_\_\_\_ (emphasis and bolding added)). The Maddox Order did not include any rights for the lakefront lots to use the Thomas dock, which stands to reason as these lots have their own docks or ability to install a dock.

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<sup>6</sup> This exhibit is a spreadsheet showing ownership of the various properties involved in this action over time. (Tr. 70:18-72:11, R. at \_\_\_\_).

<sup>7</sup> The restrictions attached to the Maddox Order were substantially revised after the July 31, 2006 hearing before Judge Maddox.

Following entry of the Maddox Order, disputes arose regarding implementation of the settlement. Rather than cooperating in the issuance of the Thomases' dock permit as required by the settlement, Larry Hinkle undertook actions that interfered with or delayed the permitting process, while simultaneously attempting to secure execution of the covenants without the concurrent issuance of the dock permit to the Thomases. (Exs. 514-17, 909, R. at \_\_\_\_). The Thomases declined to proceed on that basis and maintained that the settlement required concurrent performance by all parties. (Exs. 516, 909, R. at \_\_\_\_). By March 1, 2007, Vaughan and Hinkle had provided the required written approvals for the dock (Exs. 508-09, R. at \_\_\_\_), the covenants ("Original Covenants") were recorded (Ex. 101, R. at \_\_\_\_), and Duke Energy issued a dock permit to the Thomases (Tr. 124:8-12; Ex. 520, R. at \_\_\_\_).

The Thomases installed their dock in May of 2007 at their sole expense. (Tr. 117:1-17; Exs. 506, 510, 518, 522, R. at \_\_\_\_). It is shown below:



(Ex. 1106, R. \_\_\_\_). The dock is a floating platform and walkway attached to the Common Area by a cable and rail system.

### **III. The 2008 Lawsuit**

Almost immediately after completion of the settlement of the 2004 Lawsuit and the recording of the Original Covenants, the Hinkles began to use their majority power within the

Foster Vaughan Subdivision to harass and oppress the Thomases. (Tr. 104:11-106:2, R. at \_\_\_\_).

The Hinkles formed a property owners association (“POA”), adopted bylaws at a purported meeting of the directors (no directors were elected by the Members until at least 2009), passed rules pursuant to those spurious bylaws to require and prohibit actions not provided for in the Original Covenants (there was no rule-making or fine power established in the Original Covenants), adopted provisions for exorbitant fines for violation of those (invalid) rules, and provided that the fine money would be distributed to themselves, rather than to the POA. (Tr. 133:20-136:7; Exs. 103, 701-12, 1001[¶38], R. at \_\_\_\_).

The Thomases were unable to attend the organizational meeting of the POA on March 23, 2007, and their friend, Roger Boulis, attended as their proxy. (Tr. 126:5-131:9; Exs. 701-03, 706, 708, R. at \_\_\_\_). Boulis testified:

After the meeting was adjourned, Larry turned to me and explained, “I’ll look you right in the eyes and say to you that when a man (violates) a ‘family’ trust and causes one member to go against another, I will never forgive him, until the day I die.” He further stated, “If Roger thinks that his legal issues with Foster were difficult, wait ‘til he goes to court with me.”

(Tr. 130:7-14, Exs. 701-703, R. at \_\_\_\_). Similarly, after a POA meeting on July 24, 2007, Camala Hinkle approached the Thomases and told Diane: “If you think my father and mother are bad, wait until you have to deal with me.” (Ex. 712, Tr. 359:5-360:4, R. at \_\_\_\_).

As a result of these abusive actions by the Hinkles, the Thomases filed a second lawsuit in 2008 (the “2008 Lawsuit”) against Vaughan, the Hinkles and the POA. (Ex. 1001, R. at \_\_\_\_). The 2008 Lawsuit sought nullification of the Original Covenants, invalidation of wrongful actions of the POA, judicial dissolution of the POA, and damages based on Vaughan and the Hinkles’ breaches of fiduciary duty and civil conspiracy. (Tr. 139:24-141:21, R. at \_\_\_\_).

The 2008 Lawsuit was settled in 2014, resulting in the execution and recording of an amendment to the Original Covenants (the “First Amendment”). (Tr. 141:22-142:3; Ex.102, R. at \_\_\_\_). The First Amendment largely stripped the Hinkles of their power to use their majority voting power to further harass the Thomases and includes the following pertinent provisions, which were intended to clarify and stabilize the parties’ rights and obligations:

1. Limited the authority of the POA to the collection of real estate taxes on jointly owned land and limited assessments for routine maintenance of the Common Area and road up to \$1,000 per year [¶ 3]; and required unanimous consent for any maintenance expense over that amount, with consent not to be unreasonably withheld [¶4];<sup>8</sup>
2. Made provision for a gate to limit access to the subdivision [¶6];
3. Litigation [¶7]
  - a. Any litigation would require right to cure;
  - b. Attorney’s fees would be “determined in the same manner as in a SC mechanics lien action” ;
  - c. The POA was prohibited from enforcing the Protective Covenants;
4. All future amendments of the Original Covenants would require unanimous consent of all lot owners and the owners of the Hinkle Property [¶9].
5. Prohibited the rental of residences or lots [¶2].
6. Provisions relating to the Thomas dock [¶1], including:
  - a. The Thomases were entitled to “install and maintain one private boat dock attached to the Common Area, with a wet slip for their exclusive use, provided that the owners of the three (3) other non-lakefront subdivision lots shall have tie-up rights to the dock;”
  - b. Made repeated references to the Thomases as the “Dock Owners;”
  - b. Requiring boats exercising Tie-Up Rights to be secured in a manner which did not damage the dock, not to be tied up for periods in excess of one week, and not to exceed a size appropriate for the dock;

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<sup>8</sup> Under the limited powers set forth in the First Amendment, the POA did not have any authority with respect to the subdivision of lots within the Foster Vaughan subdivision.

- c. Allowing the Thomases to move vehicles, equipment and machinery on the Common Area as necessary to maintain or repair the dock;
- d. Requiring the Thomases to carry \$1,000,000.00 in liability insurance regarding use of the dock; and
- e. Providing that “[t]he rights of Lot 1 owners to install, use and maintain one private dock are appurtenant to that lot and shall be automatically deemed to be conveyed with the conveyance of the lot: and that “The rights of the non-lakefront lot owners to use the private dock of Lot 1 are appurtenant to those non-lakefront lots and shall be automatically deemed to be conveyed with the conveyance of any of those lots.”

(Ex. 102, Tr. 141:22-25, 144:1-14, R. at \_\_\_\_).

Under the First Amendment, there is no provision for any use rights in the Thomas dock by the lakefront owners. While the rights of the Thomases and tie-up rights of the other non-lakefront lots in the dock were made transferable and appurtenant to those lots, no such provision was made for the lakefront lots—because they had no such rights. All of the lot owners, as well as the owners of the Hinkle Property, were required to carry liability insurance on the Common Area, but only the Thomases were required to carry such insurance on the dock.

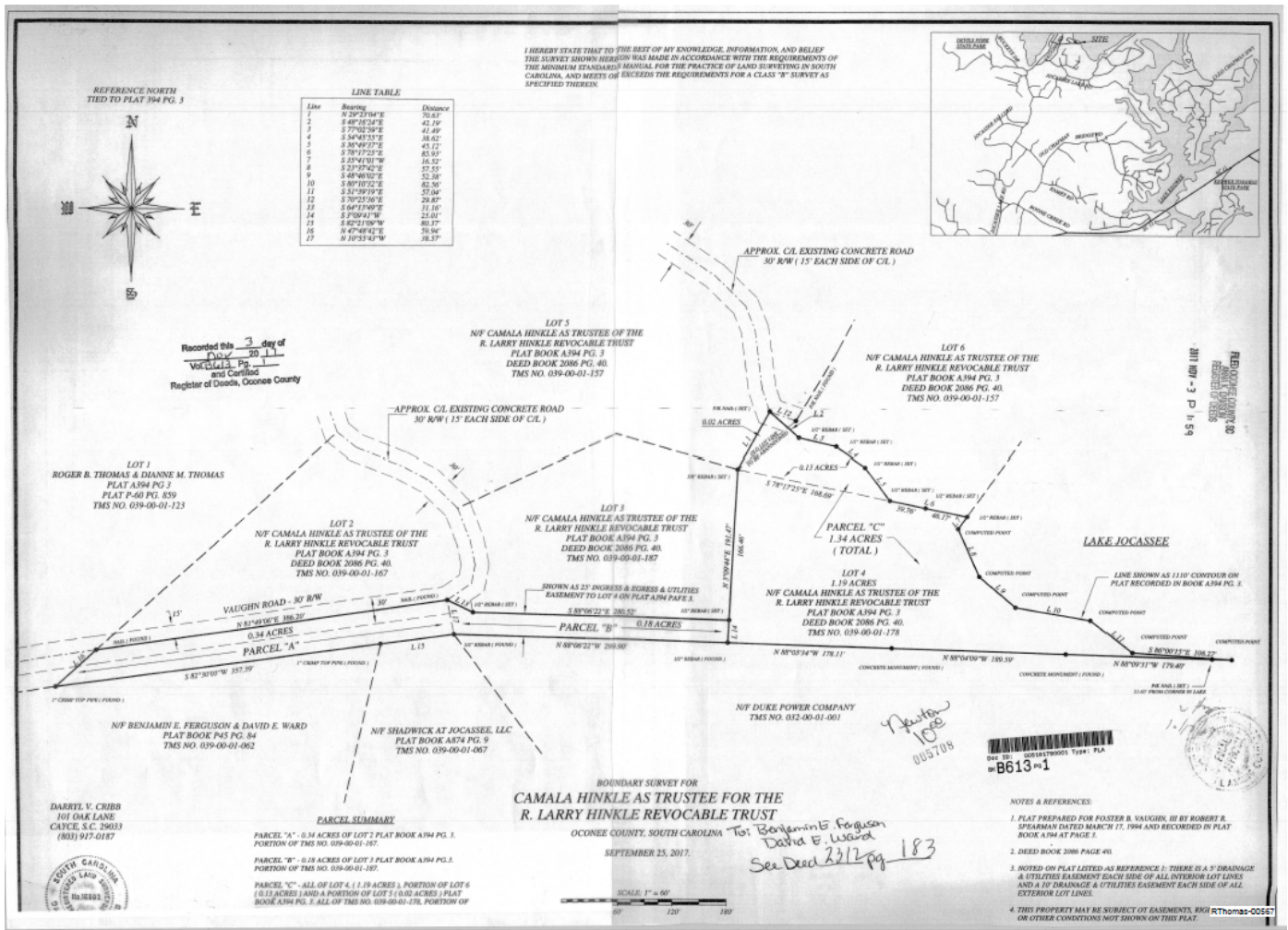
#### **IV. The Driveway**

On June 1, 2017, Camala Hinkle attempted to sell Lot 4 of the Foster Vaughan Subdivision at auction (Tr. 424:21-23, Ex. 1126, R. at \_\_\_\_). Ferguson and Ward attended the auction but did not bid. (Tr. 556:17-557:1, R. at \_\_\_\_). At that time, Ferguson and Ward owned multiple lots in Jocassee Acres, including Lots 5, 12, 15, 17 and 20. (Exs. 1, 217, 333, 352, R. at \_\_\_\_).

In July 2017, Ferguson asked for a meeting with the Thomases. During that meeting, Ferguson demanded that the Thomases consent to the installation of a driveway connecting Vaughn Road to Lot 15 in Jocassee Acres. Ferguson falsely asserted that he had an easement across the Thomases’ lot in the area where the Thomases’ storage building was located and threatened to require removal of the storage building if the Thomases did not agree to the proposed driveway.

(Tr. 156:10-158:14, 357:20-358:12, R. at \_\_\_\_). The Thomases declined to consent. (Tr. 156:10-13, 360:8-10, R. at \_\_\_\_).

In September 2017, Camala Hinkle caused a plat to be prepared subdividing portions of Lots 2 and 3 to create Parcels A and B. (Ex. 202, R. at \_\_\_\_). These new parcels were located along the southern boundaries of Lots 2 and 3, adjacent to Jocassee Acres, as shown below:



In November 2017, Camala Hinkle conveyed Parcel C<sup>9</sup> together with Parcels A and B to Ferguson and Ward. (Ex. 340, R. at \_\_\_\_).

<sup>9</sup> Parcel C was comprised of Lot 4 plus small parts of Lots 5 and 6. (Ex. 202, R. at \_\_\_\_).

In June 2018, the Hinkles began to rent out the Hinkle Property for short-term rentals on VRBO and AirBNB. (Ex. 1202, R. at \_\_\_\_). Shortly thereafter in August, Camala Hinkle asked to meet with the Thomases and, mirroring Ferguson's earlier demands, sought their consent to the installation of a driveway connecting Vaughan Road to Lot 15 in Jocassee Acres. (Tr. 491:17-503:22, 507:24-509:17, R. at \_\_\_\_). During that meeting, she told the Thomases that their refusal to agree to the driveway would likely result in litigation. The Thomases again withheld consent. (Tr. 182:10-24, 156:10-13, 360:8-10, R. at \_\_\_\_). In this same period, Ferguson unsuccessfully sought access to Lot 15 from Vaughn Road through property owned by the Addingtons in Jocassee Acres. (Ex. 203, Tr. 344:14-349:16, 389:25-390:11, R. at \_\_\_\_).

In December 2018, while the Thomases were away on a Christmas trip, Ferguson and Ward removed trees, installed a culvert, and constructed a driveway from Vaughn Road over Parcel A to Lot 15 in Jocassee Acres. (Exs. 1113-16, Tr. 154:10-156(13), R. at \_\_\_\_). Following construction of the driveway, the relationship between the Thomases and the Hinkles continued to deteriorate, and this action was filed on March 11, 2019. In their counterclaims in this action, the Hinkles and Ferguson and Ward claimed, for the first time, that the dock is a fixture and that they had full right to use it.

## STANDARD OF REVIEW

“Declaratory judgment actions are neither legal nor equitable; therefore, the standard of review depends upon the nature of the underlying issues.” *S.C. Dep’t of Transp. v. Horry Cnty.*, 391 S.C. 76, 81, 705 S.E.2d 21, 24 (2011). An action for injunctive relief is equitable in nature. *Miller v. Borg-Warner Acceptance Corp.*, 279 S.C. 90, 92, 302 S.E.2d 340, 341 (1983). In reviewing an appeal of an equitable action tried before a master, the “Court must review the entire record and make its own findings of fact according to its view of the preponderance of the evidence. This requirement does not, however, command [the Court] to ignore the findings of the trial judge.” *Thomas v. Mitchell*, 287 S.C. 35, 37–38, 336 S.E.2d 154, 155 (Ct. App. 1985) (citation omitted). Here, the relief sought by the Thomases is generally equitable in nature, seeking to enjoin activity by Defendants with respect to the driveway, the creation of Parcels A and B, Vaughan Road, and the Thomas dock.

## ARGUMENT

### **I. The Master erred in finding that Defendants had access rights to the Thomas dock apart from the limited tie-up rights granted to the non-lakefront lots.**

The Master’s order finds that “the dock is owned by the Thomases.” (Order at 15, R. at \_\_\_\_). It then goes on to find, without legal citation, that all of the parties with an interest in the Common Area should have free use of the Thomas dock limited only by the Thomases’ right to use the covered slip and the tie up rights of the non-lakefront owners. This was error given precedent and the agreements of the parties and their predecessors.

The rights of the parties with respect the Thomas dock turn on the ownership of the dock and their prior agreements. Defendants argued at trial that the Thomas dock was a fixture of the Common Area owned as tenants in common by all of the parties to this action. The Thomases argued that they own the dock as separate personal property, subject only to the tie-up rights of the

non-lakefront owners, as set forth in the Maddox Order and the First Amendment. The Master properly found for the Thomases on the ownership issue.

A fixture is “an article which was a chattel, but by being physically annexed to the realty by one having an interest in the soil becomes a part and parcel of it.” *Creative Displays, Inc. v. S.C. Highway Dep’t*, 272 S.C. 68, 72, 248 S.E.2d 916, 917 (1978). “Mere affixation does not automatically render property a fixture.” *Carjow, LLC v. Simmons*, 349 S.C. 514, 519, 563 S.E.2d 359, 362 (Ct. App. 2002). Parties may contractually agree as to whether property is a fixture. *Lane v. Bell Lumber Co.*, 122 S.C. 140, 115 S.E. 207, 209 (1922) (“Where an article belonging to one person is annexed to the freehold of another person, the question whether it shall be regarded as a fixture or not may, as between the parties, be controlled by agreement.” (quotation omitted)). To determine whether an item of personal property has become a fixture in the absence of an agreement, South Carolina courts consider the following: “(1) mode of attachment, (2) character of the structure or article, (3) the intent of the parties making the annexation, and (4) the relationship of the parties.” *Creative Displays*, 272 S.C. at 72, 248 S.E.2d at 918. Critically, the fixture determination is a binary classification under South Carolina law—an item is either personal property or a fixture; it cannot be both simultaneously.

**A. The Master correctly found that the Thomas dock is owned by the Thomases; therefore, the dock is not a fixture of the Common Area and is not subject to general use by Defendants.**

The Master correctly found that the Thomases own the Thomas dock. (Order at 15, R. at \_\_\_\_). This finding was supported by compelling evidence, including admissions by the Hinkles in their pleadings in the 2008 Lawsuit (Exs. 1001 ¶ 29, 1002 ¶ 29, R. at \_\_\_\_); deposition admissions in the 2008 Lawsuit by Mary Hinkle (Tr. 331:20-332:16, R. at \_\_\_\_), Larry Hinkle (Tr. 331:20-334:10, R. at \_\_\_\_), and Camala Hinkle (Tr. 331:12-16, R. at \_\_\_\_); and the Hinkles’ consistent billing of the Thomases for the portion of the Oconee County taxes attributable to the dock (Exs.

401-418, R. at \_\_\_\_). Without dispute, the Thomases bought the dock and have paid all expenses associated with it, including “installation, maintenance, insurance, and taxes.” (Order at 11 ¶U, R. at \_\_\_\_).

This finding of ownership follows the language of the First Amendment, which provides in part:

1. **Dock.** The owners of Lot 1 are entitled to install and maintain one private boat dock attached to the Common Area, with a wet slip for their exclusive use, provided that the owners of the three (3) other non-lakefront subdivision lots shall have tie-up rights to the dock. The dock is further subject to the following:
  - a. **Tie-up rights.** Boats must be secured in a manner that will not damage dock; boats can under no conditions be tied-up for more than one week without use; boats cannot exceed appropriate size for the dock.
  - b. **Maintenance.** The dock owners can move vehicles, equipment, and machinery on the Common Area as reasonably necessary to maintain or repair the dock.
  - c. The dock owners agree to be responsible for any damages they may cause to the Common Area, including the retaining wall, during such maintenance or repair.
  - d. **Insurance.** The dock owners shall maintain, and provide the POA evidence of, insurance coverage regarding use of the dock with policy limits of at least \$1,000,000.00.
  - e. **Transfer of interest.** The rights of Lot 1 owners to install, use and maintain one private dock are appurtenant to that lot and shall be automatically deemed to be conveyed with the conveyance of the lot. The rights of the non-lakefront lot owners to use the private dock of Lot 1 are appurtenant to those non-lakefront lots and shall be automatically deemed to be conveyed with the conveyance of any of those lots.
  - f. **Assignment.** Any rights to use the dock are limited to lot owners and their guests, as provided herein, and these rights are not assignable to other parties.

(Ex. 102, R. at \_\_\_\_). The First Amendment and the Settlement Agreement attached to it repeatedly describe the owners of Lot 1 (the Thomases) as the dock owners. The dock is further described as a private dock. There is no mention of the lakefront lots having any rights whatsoever with respect to the dock, and no reference to any rights for the other interior lots other than the referenced tie-up rights.

Given this language and evidence, the Master correctly found that the Thomas dock is owned by the Thomases. Where the Master erred was in failing to consider the implications of that ownership and the parties’ agreements. In essence, the Master treated the Thomas dock as if it was

a fixture of the Common Area, rather than the Thomases' property.

Because the Thomases own the dock, there is no general right to use the property of another that would support use by third parties. In South Carolina, the holder of a limited use right over another's property is entitled only to those rights expressly granted. As a general rule, the language of the easement controls. *Binkley v. Rabon Creek Watershed Conservation Dist. of Fountain Inn*, 348 S.C. 58, 67, 558 S.E.2d 902, 906–07 (Ct. App. 2001). Restrictions on the use of property by its owner will be strictly construed. *Hardy v. Aiken*, 369 S.C. 160, 166, 631 S.E.2d 539, 542 (2006). The dominant estate only has those rights “incident or necessary to its proper enjoyment, but nothing more.” *Clemson Univ. v. First Provident Corp.*, 260 S.C. 640, 650, 197 S.E.2d 914, 919 (1973). The Thomases retain all rights to the dock not otherwise expressly granted to the non-lakefront property owners.

The case of *Snow v. Smith*, 416 S.C. 72, 87–89, 784 S.E.2d 242, 249–50 (Ct. App. 2016), is instructive here. There, the court held that homeowners whose deeds granted them only access to the lake were limited to precisely that access right, while the one homeowner whose deed granted “the use of the Lake Access Lot” was entitled to broader use. The court stated: “In keeping with the principle that an easement holder is only entitled to the use that least restricts the property, Appellants are not entitled to use the Lot other than to access the lake using the driveway and ramp.” *Id.* This holding maps directly onto the present dispute: the non-lakefront owners were granted only tie-up rights — the right to tie up boats to the outside of the dock — not the right to use the dock's full facilities for any and all purposes.

Although *Snow* and *Clemson* arose in the context of easements over real property, the logic of the rule applies equally to rights to the use of personal property. Owners of personal property have the right to exclude others from using or interfering with that property. Both the trespass to

chattels doctrine and the closely related tort of conversion stand for the principle that any unauthorized interference with, use of, or dispossession of another's personal property without the owner's consent is actionable. *See Gilmore v. Roberts*, 18 S.C. 551, 554 (1883) (“If a plaintiff has title to a piece of property, whether real or personal, and also shows that another has trespassed upon it, by any unlawful use of or interference with it, we see no reason why he should not now be permitted to recover damages for such trespass.”); *Owens v. Andrews Bank & Tr. Co.*, 265 S.C. 490, 220 S.E.2d 116 (1975) (“Conversion has been defined in our case law as an unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the exclusion of the owner's rights.”).

**B. The term “tie-up rights” is not ambiguous and should be applied according to its plain meaning.**

As a general rule, contract language must be construed according to its plain meaning. *Holden v. Alice Mfg., Inc.*, 317 S.C. 215, 220, 452 S.E.2d 628, 631 (Ct. App. 1994). If the language is clear and unambiguous, it determines the rights and obligations of the parties as a matter of law and no additional evidence will be considered. *Id.* These same general principles apply to restrictive covenants. *Penny Creek Assocs., LLC v. Fenwick Tarragon Apartments, LLC*, 375 S.C. 267, 271, 651 S.E.2d 617, 620 (Ct. App. 2007) (“Restrictive covenants are contractual in nature, and thus, the language used in the restrictive covenant is to be construed according to its plain and ordinary meaning.”); *SPUR at Williams Brice Owners Ass’n, Inc. v. Lalla*, 415 S.C. 72, 83, 781 S.E.2d 115, 121 (Ct. App. 2015). Unless there is an ambiguity in the document, courts do not resort to extrinsic evidence to determine the intent behind the grantor or grantee. *See Williams v. Tamsberg*, 425 S.C. 249, 259, 821 S.E.2d 494, 500 (Ct. App. 2018) (“[W]hen interpreting a deed, the primary rule of constructing the deed is to ascertain and effectuate the parties’ intentions, unless that intention contravenes some well-settled rule of law or public policy.” (internal citations

omitted)); *Gardner v. Mozingo*, 293 S.C. 23, 25, 358 S.E.2d 390, 392 (1987) (“The intention of the grantor must be found within the four corners of the deed.” (citation omitted)).

The First Amendment provides for tie-up rights to the non-lakefront owners and further provides, “Tie-up rights. Boats must be secured in a manner that will not damage dock; boats can under no condition be tied-up for more than one week without use; boats cannot exceed appropriate size for the dock.” (Ex. 102, R. at \_\_\_\_). Since the term “tie-up rights” is not defined, it must be given its plain, ordinary, popular dictionary meaning. *Am. Credit of Sumter, Inc. v. Nationwide Mut. Ins. Co.*, 378 S.C. 623, 628, 663 S.E.2d 492, 495 (2008); *Walde v. Ass’n Ins. Co.*, 401 S.C. 431, 444–45, 737 S.E.2d 631, 637–38 (Ct. App. 2012) (considering dictionary definitions to determine meaning of an undefined term in insurance policy). According to Merriam-Webster, the first definition of “tie up” as a verb means “to attach, fasten, or bind securely,” and the intransitive verb form’s first definition is to “dock.” <https://www.merriam-webster.com/dictionary/tie-up> (accessed May 20, 2026). Camala Hinkle recognized the plain meaning of the term “tie-up rights” in her deposition testimony in the 2008 Lawsuit, in which she admitted that the Thomases own the dock and that her tie-up rights consisted of being able to cross the dock to get on and off of her boat. (Tr. 331:13-16, R. at \_\_\_\_).

Given these definitions, nothing about the use of the term “tie-up rights” suggests that the other owners are entitled to general use of the dock for any and all purposes as found by the Master. The term is not susceptible to the interpretation that it means generalized rights to use the dock, including fishing, swimming, partying, or just “hanging out.” As a result, the Master erred in finding that anyone had rights in the Thomas dock beyond the tie-up rights belonging to the non-lakefront owners. In the Maddox Order and the First Amendment, Lots 2, 3 and 5 were granted tie-up rights. They were granted nothing more, and the lakefront lots were granted nothing.

**C. The Master erred in considering extrinsic evidence to imply a general right of use despite the Thomases' ownership of the dock.**

Contrary to the finding in paragraph FF of his order, it is the Master that undertook to rewrite the parties' agreement, which plainly provides that the only rights enjoyed by the other owners are the tie-up rights given to the non-lakefront owners. The Master created this general use right out of whole cloth and in contravention to the Thomases' ownership of the dock. Defendants have full use of the Common Area, but they do not have any rights to the Thomases' personal property, the Thomas dock, outside of those rights provided in the Maddox Order and the First Amendment. Moreover, in expanding the use of the dock, the Master expanded the potential liability to the Thomases for any injury that might occur on or around the dock well beyond that contemplated in the Maddox Order or the First Amendment.

The Master did not declare the term "tie-up rights" to be ambiguous, nor did he find that tie-up rights include generalized use rights. Instead, he implied the existence of general use rights based on the testimony of Camala Hinkle and Foster Vaughan as to their "understanding" of the Maddox Order and the First Amendment, his belief as to what would be "useful" to the other lot owners, and language in the dock permit issued by Duke Energy to the Thomases. None of those considerations form a proper basis to expand the rights granted in the parties' agreements.

South Carolina applies the objective theory of contract interpretation and the four-corners rule: when an agreement is clear and unambiguous, courts enforce it as written and do not admit extrinsic evidence to vary or contradict its terms. *See Silver v. Abstract Pools & Spas, Inc.*, 376 S.C. 585, 592–93, 658 S.E.2d 539, 542–43 (Ct. App. 2008). Contract interpretation "is governed by the objective manifestation of the parties' assent at the time the contract was made" and "does not depend on the subjective, after the fact meaning one party assigns to it." *Id.* at 593, 658 S.E.2d at 543 (citation omitted). There was no evidence that either Vaughan or Hinkle contemporaneously

communicated to the Thomases any understanding at variance with the plain meaning of the parties' agreements with respect to the dock. Thus, the Master's findings based on the after the fact testimony of Foster Vaughan and Camala Hinkle are in error. (Order at CC and EE, R. at \_\_\_\_).

As to the "usefulness" of the dock to the other lot owners (Order at Z, R. at \_\_\_\_), the Master's consideration should have been limited to the language of the agreements themselves, "regardless of their wisdom or folly, apparent unreasonableness, or any failure of the parties to guard their interests carefully." *Maybank v. BB&T Corp.*, 416 S.C. 541, 574, 787 S.E.2d 498, 515 (2016). Courts cannot alter unambiguous contracts by construction or make new contracts for the parties. *Lee v. Univ. of S.C.*, 407 S.C. 512, 518, 757 S.E.2d 394, 397 (2014); *Am. Bankers Life Assur. Co. of Fla. v. Frederick*, 315 S.C. 97, 100, 431 S.E.2d 636, 639 (Ct. App. 1993). Thus, the fact that ability to use the dock might have been desirable to the other owners of the Common Area cannot vary the unambiguous terms of the Maddox Order and the First Amendment.

Similarly, the Master erred in considering isolated testimony about the dock permit in construing the parties' agreements. (Order at L, R. at \_\_\_\_). Brett Garrison, Duke Energy's 30(b)(6) designee, testified that the "private use" language in the Thomases' dock permit reflected that the permit was issued pursuant to Duke Energy's Private Facilities program, which only allows the issuance of permits to one or more of the owners of lake-front property. He went on to testify that Duke Energy does not regulate how co-owners of lakefront property allocate ownership or use of the dock among themselves and that co-owners are free to make such agreements regarding the ownership and use of private docks. (Tr. 371:20-380:7; Exs. 531, 525, R. at \_\_\_\_). Given this testimony, nothing about the issuance of the dock permit suggests that the parties were not free to

make agreements regarding the ownership and use of the dock or that the owners of the Common Area have a general right to use the Thomas dock.

For all of these reasons, the Master erred in finding in favor of Defendants on the dock issue. The dock is the personal property of the Thomases. It is not a fixture. Defendants have no right to use the dock beyond the tie-up rights granted to the non-lakefront owners.

**II. The Master erred in finding that there was nothing prohibiting a driveway connecting Vaughn Road to Lot 15 in Jocassee Acres.**

**A. The Master impermissibly expanded the scope of an access easement to allow access by lots outside the Foster Vaughan Subdivision.**

As discussed above, an easement must be construed narrowly in favor of free use of the property by its owner. “[T]he owner of the easement cannot materially increase the burden of the servient estate or impose thereon a new and additional burden.... The owner of an easement is said to have all rights incident or necessary to its proper enjoyment, but nothing more. And, if he exceeds his rights either in the manner or in the extent of its use, he becomes a trespasser to the extent of the unauthorized use.” *Clemson Univ. v. First Provident Corp.*, 260 S.C. 640, 649, 197 S.E.2d 914, 919 (1973).

The driveway in dispute begins at Vaughn Road and traverses Parcel A within the subdivision to reach Lot 15 in Jocassee Acres, a wholly distinct parcel in a separate, unrestricted subdivision. Every use of the driveway to access Lot 15 necessarily brings traffic over Vaughn Road and the Thomases’ Lot 1 for the benefit of Lot 15, a non-dominant tenement that was never part of the easement grant. This imposes an additional burden on the Thomases’ Lot 1 above and beyond what was contemplated when the easement was created.

This expanded use is improper. An easement “for the benefit of a particular piece of land cannot be enlarged and extended to other parcels of land ... to which the right is not attached,” because an appurtenant easement “can be used only for the purposes of [the dominant tenement];

it is not a personal right.” *Rhett v. Gray*, 401 S.C. 478, 494, 736 S.E.2d 873, 881 (Ct. App. 2012) (quotation omitted). The rule applies regardless of how the easement was created and exists to prevent increased burdens on the servient estate. *Id.* Similarly, an easement appurtenant to one parcel “may not be extended ... to other parcels owned by [the dominant owner], whether adjoining or distinct tracts,” and any such extension is a misuse. *Id.*

That is what occurred here. Vaughn Road is a private subdivision road created to serve the six lots in the Foster Vaughan subdivision and the Hinkle Property. Ferguson and Ward’s right to use Vaughn Road exists only as an appurtenant easement incident to their ownership of Lot 4. Nothing in the grant contemplates—much less authorizes—using that easement to provide access to Lot 15 in Jocassee Acres. A purpose-built driveway from Vaughn Road to Lot 15 therefore exceeds the easement’s scope as a matter of law. The Master appears to agree on pages 18 and 19 of the order that the driveway could expand the use of Vaughn Road by connecting it to Jocassee Acres but disregards that fact because Lot 4 within the Foster Vaughan Subdivision and Lot 15 have the same ownership. This was error. Under *Rhett*, it was a clear expansion of rights to allow the driveway, regardless of ownership of the two lots.

*Rhett* recognized a narrow exception for an incidental extension where the added burden is “relatively trifling” or has “materially decreased or not increased.” That exception does not apply. This is not a marginal increase in the same use pattern; it is a new access point designed to route traffic from an entirely different subdivision whose owners have no rights in Vaughn Road onto the servient estate. The driveway does not merely facilitate access to Lot 4; it functionally converts a limited, appurtenant subdivision easement into a general access route for other lands. That is the very enlargement *Rhett* forbids.

The Master attempted to justify his ruling by finding that “the burden on Vaughn Road has not been increased at all.” But the governing inquiry is not whether traffic has already measurably increased; it is whether the challenged use authorizes a new and additional burden by extending the easement beyond the dominant estate. Serving Lot 15 necessarily changes the character of the burden by opening Vaughn Road to external, unrestricted property and expanded categories of use, including rental or other intensified uses that are forbidden within the Foster Vaughn Subdivision, access to additional parcels owned by Ferguson and Ward, and other potential third-party access through Jocassee Acres. (Tr. 568:1–15, R. at \_\_\_\_).

This burden is compounded because Vaughn Road is private and maintained at the Foster Vaughan Subdivision owners’ expense. (Ex.102 ¶¶ 4–5, R. at \_\_\_\_). Thus, any additional wear and tear on Vaughn Road will be borne by the Foster Vaughan Subdivision owners, including the Thomases. The Master’s order also improperly shifts the burden to the Thomases to police future misuse and return to court as the expansion grows at the risk of an additional attorney’s fee award against them if a court disagrees. South Carolina law does not require servient owners to endure an unauthorized enlargement until it becomes intolerable; it prohibits the enlargement at the outset.

**B. The driveway violates the Original Covenants and the First Amendment.**

The First Amendment requires that a gate be installed on Vaughn Road “for the use and benefit of all subdivision lot owners” and the Hinkle property, with additional measures to “prevent persons from driving around the gate.” (Ex.102 ¶ 6, R. at \_\_\_\_). This provision reflects a clear intent to restrict access to Vaughn Road to a defined and limited class of users—those with rights within the Foster Vaughn Subdivision and the Hinkle property. The installation of the driveway from Vaughn Road to Lot 15 in Jocassee Acres directly contravenes that provision.

Lot 15 is not part of the Foster Vaughan Subdivision and is not subject to its restrictive covenants. By creating a physical connection from Vaughn Road to Lot 15, Defendants have

enabled non-subdivision property to access a private, gated road that was expressly intended to be limited in use. This undermines the very purpose of the gate provision: to control and confine access to those properties and persons entitled to use Vaughn Road under the governing covenants.

Moreover, the requirement that the gate be constructed in a manner that prevents circumvention underscores that unauthorized access, whether by bypassing the gate physically or by routing access through a subdivision lot, is prohibited. The driveway accomplishes indirectly what the covenants forbid directly: it allows access to the private portion of Vaughn Road by properties outside the Foster Vaughan Subdivision which are not subject to its restrictions, obligations, and limitations.

By permitting this access, the Master's ruling nullifies the practical effect of the gated access provision. The gate cannot function as an effective restriction if access may be freely extended to non-subdivision parcels through internal connections such as the driveway at issue. In other words, it directly lets in the back door what cannot gain entry through the front. Accordingly, the use of Vaughn Road to access Lot 15 violates the plain language and purpose of the First Amendment's gated access provision and provides an independent basis for reversal.

In addition, the driveway and its connection to Lot 15 violates the single-family use restriction found in the Original Covenants. It is undisputed that the Original Covenants limit lots in the Foster Vaughan Subdivision to single-family residential use. The Thomases contend the driveway violates that restriction by converting Parcel A into an access road for an unrestricted parcel.

In *Donald E. Baltz, Inc. v. R. V. Chandler & Co.*, 248 S.C. 484, 151 S.E.2d 441 (1966), the South Carolina Supreme Court enjoined a landowner from clearing and graveling a roadway across a restricted residential lot to provide vehicular access to an adjoining, unrestricted tract. The Court

held that the applicable covenants permitted only use “as the site of a single family residence” and uses “incidental to the occupation of the residence as a habitation.” *Id.* at 489, 151 S.E.2d at 444. A roadway built to reach other property was not incidental; it was “incompatible” with the only conforming use because the lot’s “primary, even exclusive, use” became a roadway as distinguished from “the use of part of a residential lot as a driveway,” which can be an incidental residential use. *Id.* The Court also emphasized that the tract being served was unrestricted, making the claimed “residential” use nonconforming and therefore not “a residential use within the meaning of the covenants.” *Id.*

In this case, Parcel A has been physically improved with a driveway whose purpose is to provide vehicular access to an adjoining, unrestricted tract. Parcel A is not being used, and cannot realistically be used, as the site of a single-family residence. Its exclusive function is as a roadway. Under *Baltz*, that use is incompatible with the single-family residential restriction.

Nor can the driveway be justified as “incidental” to a residence on Lot 15. *Baltz* forecloses that argument: where the parcel being accessed is unrestricted, the use being served is not a conforming use “within the meaning of the covenants.” *Id.* *Baltz* permitted “the use of part of a residential lot as a driveway” only when subordinate and accessory to a residence on the restricted lot itself. Here, the driveway serves no residence on Parcel A; it functions as a through-access route from Vaughn Road into an unrestricted subdivision. As such, judgment should have been granted in the Thomases’ favor on this point.

**C. The creation of Parcels A and B to facilitate the construction of the driveway violated the Original Covenants.**

Paragraph 3 of the Original Covenants provides:

3. **No Subdivision of Lots.** No lot may be subdivided or boundary lines within the property changed, without the prior written consent of the Declarant, except that two or more contiguous lots may be merged into a single lot. Further, *any lot may be subdivided for the purpose of enlarging adjoining lots.* (emphasis added).

The order erroneously finds that the subdivisions of Lots 2 and 3 were valid because they were “subdivided for the purpose of enlarging adjoining lots.” (Order, R. at \_\_\_\_). The Master’s logic was that Lot 3 was subdivided to create Parcel B, which was then combined with Lot 4; then, Lot 2 was subdivided to create Parcel A, which was then combined with the combined Lots 4 and Parcel B.

This rationale is not supported by the record. Parcels A, B and C (Lot C is Lot 4 plus small parts of Lots 5 and 6 which lie east of Lot 4) were conveyed by Camala Hinkle to Ferguson and Ward as separate parcels. (Exs. 340, 202, R. at \_\_\_\_). There was no evidence showing that either Parcel A or Parcel B was ever combined with Lot 4. Thus, the Master clearly erred in finding this was about an “enlargement of Lot 4.” (Order at 25, R. at \_\_\_\_).

Moreover, the Order disregards the obvious intent of the subdivision, which was to create a sliver of land on which to build access to Jocassee Acres. The plain meaning of Paragraph 3 requires the subdivided portion to directly adjoin the lot being enlarged at the time of subdivision; otherwise, the exception swallows the rule, enabling land-bridge corridors to external parcels in contravention of the purpose of the Original Covenants.

Ferguson and Ward contend the subdivision was necessary to run water and sewer lines between Lot 4 and Lot 15 to serve Lot 4, but no water or sewer lines were ever installed between Lots 4 and 15. (Tr. 476 :9–15, R. at \_\_\_\_). To the contrary, after the Thomases and the Addingtons refused to provide the requested access, Hinkle, Ferguson, and Ward enacted this subdivision scheme. Any utility route could have been addressed by easement without subdividing lots. Instead, from June 2017 through 2018, Ferguson and Hinkle repeatedly requested, cajoled, and threatened the Thomases and Addingtons for Vaughn Road access to Lot 15. When consent was

not given, Camala Hinkle purported to subdivide Lots 2 and 3 to create a panhandle “land bridge,” a configuration serving as a pretext to provide Lot 15 access to Vaughn Road.

On this record, the only reasonable inference is that the subdivision of lots was undertaken for the purpose of facilitating the Lot 15 driveway, not for the purpose of enlarging Lot 4 or installing utilities. The Master’s findings disregard the parcel configuration and subsequent driveway-related conduct and are clearly erroneous.

**III. The award of more than \$300,000 in attorney’s fees is in error given the fee provision in the First Amendment.**

As an initial matter, if the Master’s order is reversed as to the driveway, subdivision, and/or the dock issues, the award of attorney’s fees must also be reversed and/ or remanded for further consideration consistent with this Court’s ruling. In the event the Court affirms the Master’s decision in whole on the other issues, the Master erred in awarding more than \$300,000 in attorney’s fees based on the language of the First Amendment.

“In South Carolina, the authority to award attorney’s fees can come only from a statute or ... the language of a contract. There is no common law right to recover attorney’s fees.” *Seabrook Island Prop. Owners’ Ass’n v. Berger*, 365 S.C. 234, 238–39, 616 S.E.2d 431, 434 (Ct. App. 2005) (quoting *Harris-Jenkins v. Nissan Car Mart, Inc.*, 348 S.C. 171, 176, 557 S.E.2d 708, 710 (Ct. App. 2001)). Attorney fee provisions in restrictive covenants must be narrowly construed. *Queen’s Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 375, 628 S.E.2d 902, 920 (Ct. App. 2006) (narrowly construing entitlement to claim attorney fees under covenant provision where the covenant’s fee provision was limited to “violators”). “The review of attorney fees awarded pursuant to a contract is governed by an abuse of discretion standard.” *Laser Supply & Servs., Inc. v. Orchard Park Assocs.*, 382 S.C. 326, 340, 676 S.E.2d 139, 147 (Ct. App. 2009). “An abuse of discretion occurs when the trial court’s ruling is based on an error of law or, when

grounded in factual conclusions, is without evidentiary support.” *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000).

Here, the First Amendment contains a narrow attorney’s fee provision in Paragraph 7 as follows:

7. **Enforcement.** *A lot owner may enforce these Restricted Covenants* through litigation (in which case all parties consent to exclusive jurisdiction of the Master in Equity by a consent order of reference) or, if agreed to by all of the parties, binding arbitration. ***In either case, attorneys’ fees will be determined in the same manner as in a SC mechanics lien action.*** Before instituting any such action, the complaining party will send the alleged violating party written notice of the violation and a demand the violation be cured within 30 days. Further action can only be commenced after expiration of this cure period, except if exigent circumstances exist that necessitate immediate action, the complaining party may seek injunctive relief without further delay. The POA does not have the right to enforce the Restricted Covenants and all such enforcement actions must be brought by subdivision lot owners.

(Ex. 102, R. at \_\_\_\_ (emphasis and bolding added)). As set forth there, attorney’s fees are awardable only in an action to enforce the subdivision covenants, and then, “attorney’s fees will be determined in the same manner as in a SC mechanics lien action.” The Thomases contend that the Master erred in two respects: (1) much of what was presented to and ruled upon by the Master was unrelated to the enforcement of the covenants, and (2) the Master failed to consider when and how fees are awarded in a mechanics lien action.

Here, there was no lien or monetary verdict, therefore, there would be no entitlement to fees under the South Carolina mechanics lien statute. As set forth in S.C. Code Ann. §§ 29-5-10(a) and -20(A), a person to whom a debt is due for labor or materials furnished on real estate may secure a lien on the property. These statutes provide that “the costs which may arise in enforcing or defending against the lien under this chapter, including a reasonable attorney’s fee, may be recovered by the prevailing party,” but critically specifies that “the fee and the court costs may not exceed the amount of the lien.” These sections define the prevailing party through a comparison

of monetary settlement offers to a monetary verdict: “One verdict assumes some entitlement to the mechanic’s lien and the consideration of compulsory counterclaims. The party whose offer is closer to the verdict reached is considered the prevailing party in the action.” S.C. Code Ann. §§ 29-5-10 and 29-5-20. If the difference between both offers and the verdict is equal, neither party is the prevailing party, and no fees may be awarded.

This Court has confirmed that “it is the enforcement of the lien which confers the right to attorney fees, and not the joinder of an attempted enforcement with another non-statutory cause of action on which the lienor prevails.” *Utilities Const. Co. v. Wilson*, 321 S.C. 244, 248-49, 468 S.E.2d 1, 3 (Ct. App. 1996). The fee cap under the incorporated mechanics lien statutes operates as a mathematical bar to any fee award when no monetary debt is at issue. Sections 29-5-10(a) and 29-5-20(A) both provide that the fee and court costs “may not exceed the amount of the lien.”

Here, no monetary relief was sought by the Thomases or awarded to any party. The amount of the lien is therefore zero. The cap of zero applies whether one reads the provision as importing the mechanics lien framework in its entirety or as simply borrowing the fee-shifting concept from those statutes. Applying the plain text of the covenant’s cross-reference, the Master had no basis upon which to award attorney fees, because no lien amount existed against which to measure reasonableness.

Even setting aside the cap, the statutory framework for determining who is the prevailing party, the threshold eligibility question for any fee award, cannot function without a monetary verdict. Sections 29-5-10(b) and 29-5-20 both define the prevailing party as the party “whose offer is closer to the verdict reached.” This determination requires: (1) a monetary offer from the plaintiff (or the “amount prayed for in his complaint” if no offer is made, per § 29-5-10(b)); (2) a monetary

offer from the defendant (or zero if none is made), and (3) a monetary verdict to which both offers are compared.

In the absence of monetary relief, the “verdict” is zero. No funds were offered by either the Thomases or Defendants. The difference between both offers and the verdict is equal (all are zero), which under the statute means “neither party is considered to be the prevailing party for purposes of determining the award of costs and attorney’s fees.” Thus, there is no basis for an attorney’s fee award here.

In addition, the attorney’s fee provision at issue, properly construed, only authorizes fees in connection with monetary claims, not equitable claims like those presented here. The covenant provision says fees will be determined “in the same manner as in a SC mechanics lien action.” To give meaning to the reference to mechanics lien actions, the fee provision must be construed to apply only where there is a monetary debt to secure.

The covenant drafters chose to cross-reference a statute that applies exclusively to monetary debts secured by property liens. If they intended a general prevailing party attorney fee provision applicable to all claims, they could have simply said so. Courts lack authority to rewrite contracts and must enforce agreements according to their terms. *Huskins v. Mungo Homes, LLC*, 444 S.C. 592, 594, 910 S.E.2d 474, 476 (2024). A court’s duty is confined to interpreting contractual provisions agreed to by the parties “regardless of their wisdom or folly, apparent unreasonableness, or any failure of the parties to guard their interests carefully.” *Maybank v. BB&T Corp.*, 416 S.C. 541, 574, 787 S.E.2d 498, 515 (2016). The Master erred in disregarding the language of the First Amendment to find that there was a general agreement that attorney’s fees would be awarded to the prevailing party.

*TCC of Charleston, Inc. v. Concord & Cumberland, LLC*, 446 S.C. 202, 918 S.E.2d 699 (Ct. App. 2025) addresses whether contractual language incorporating mechanics lien fee provisions by reference created a right to attorney fees for the prevailing party, and second, whether attorney fees had to be limited to the mechanics lien claims. The court there found that (1) the contractual incorporation did not establish a prevailing party right to attorney fees because the referenced language was in a section titled “Fees and Expenses of Arbitrators” and only addressed arbitrators’ fees rather than counsel fees, and (2) the attorney’s fee award had to be reversed because no differentiation was made between fees incurred defending the lien action and fees incurred in other proceedings. While the contractual language in that case differs from the provision here, the Court’s reasoning that a valid, enforceable lien is a prerequisite to invoking the mechanics lien attorney fee statute, and that fees must be strictly limited to lien-related claims, directly supports the Thomases’ arguments.

Even if this Court were to find that a fee award was possible in this case, the award must be limited to time spent on the claims seeking *enforcement* of the restrictive covenants. South Carolina courts have consistently held that attorney fees under the mechanics lien statutes may not be awarded for time spent on other, non-lien claims litigated in the same proceeding.

Neither party sought to enforce any provision of the subdivision covenants with respect to usage of the dock: each of the parties claimed usage rights based on their ownership, or purported ownership, of the dock. The Thomases sought to enforce their ownership rights—not that Defendants had violated the covenants. The Hinkles, Ferguson and Ward contended that the dock was a fixture, and that they had the right to use it as co-owners of it. The Master ruled for the Thomases on the ownership issue, but then determined that Defendants had use rights not found in the Original Covenants or the First Amendment. While the provisions of the Covenants were

relevant to the use rights asserted by the respective parties, there was no contention by either party that any party was in violation of any covenant. As such a fee award on this issue was improper. *See Queen's Grant II Horizontal Prop. Regime*, 368 S.C. at 375, 628 S.E.2d at 920.

Even if this Court concludes that attorney's fees are potentially recoverable based on the language in the First Amendment, the award must be limited to fees incurred in enforcing the covenants. Accordingly, any fee award must exclude amounts attributable to: (1) claims which did not relate to covenant enforcement, including those relating to dock ownership and use, and claims relating to overuse of Ferguson and Ward's easement over Vaughn Road and the scope of that easement; and (2) Defendants' counterclaims that were voluntarily dismissed on the eve of trial. At a minimum, if this Court determines that Defendants may recover attorney's fees on certain claims, the attorney's fee award must be reversed and remanded for proper allocation. On remand, the Master should be directed to segregate fees by claim and award fees, if any, only for those claims on which Defendants prevailed and which constitute enforcement of the restrictive covenants.

### **CONCLUSION**

The Thomas dock belongs to the Thomases, subject only to the limited tie up rights granted to the non-lakefront lot owners. The Master erred in finding that Defendants have any rights to use the dock beyond those tie-up rights.

The Master further erred in finding that the gated, private portion of Vaughn Road that was created to serve the restricted properties within the Foster Vaughan Subdivision could be used to provide access to Lot 15 in Jocassee Acres and in finding that portions of the Foster Vaughan Subdivision could be further subdivided to support that access.

Lastly, the Master erred in awarding over \$300,000 in attorney's fees to Defendants in this matter where the parties agreed only that "[a] lot owner may enforce these Restricted Covenants

through litigation (in which case all parties consent to exclusive jurisdiction of the Master in Equity by a consent order of reference) or, if agreed to by all of the parties, binding arbitration. In either case, attorneys' fees will be determined in the same manner as in a SC mechanics lien action." The Thomases contend that the fee award should be reversed based on the Master's errors with respect to the dock and the driveway/ subdivision issues. Even if those rulings are affirmed, the Master erred in failing to consider whether an award was appropriate under the South Carolina mechanics lien statutes and by failing to limit any award to time spent on claims which sought enforcement of the restrictive covenants and on which Defendants prevailed.

For all of these reasons, this action should be reversed and/ or reversed and remanded for further consideration consistent with this Court's order.

Respectfully submitted,

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