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S.C. SUPREME COURT

**THE STATE OF SOUTH CAROLINA
In the Supreme Court**

**APPEAL FROM ANDERSON COUNTY
Court of Common Pleas**

R. Scott Sprouse, Circuit Court Judge

Appellate Case No. 2026-001013

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

v.

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

RETURN TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

Counter-Statement of the Case 1

Arguments 5

A. The Trial Court and Court of Appeals Correctly Addressed Usage of the Property within the Meaning of the Covenants..... 6

B. The Courts Below Correctly Refused to Create a Distinction Between Residential versus Recreational Usage..... 7

C. The Court of Appeals Correctly Held that Petitioners Abandoned their Argument Regarding Characterization of Usage 10

D. The Court of Appeals Accurately Addressed Actual Usage by Respondents 10

E. The Court of Appeals Did not Need to Reach Public Policy Arguments 11

Conclusion 13

COUNTER-STATEMENT OF THE CASE¹

Petitioners filed this declaratory judgment asking the trial court to permanently enjoin Respondents from walking across their property. Respondents filed their Answer and Counterclaim, acknowledging applicability of certain residential restrictive covenants to their property but denying any violations. Respondents denied that Petitioners were entitled to the relief requested.

Petitioners initiated this action by filing their Summons and Complaint on September 29, 2022. (R. 59, Summons and Complaint). Petitioners alleged that three specific uses of Respondents' property violated residential restrictive covenants of the development, at least when such conduct was undertaken by Respondents. Specifically, Petitioners complained of 1) Respondents' use of property to obtain dock permits from the US Army Corp or Engineers, 2) accessing utilities on their property to permitted docks, 3) parking and being present on their property in connection to their intended use. Petitioners sought a permanent injunction to prohibit these perceived violations of restrictive covenants.

Respondents Answered on November 2, 2022. (R. p. 82, Answer and Counterclaim). Respondents denied violating the subject covenants, sought the Court's Order declaring that their use of property was in conformity with the covenants, and seeking an award of attorney's fees. Petitioners timely filed a Reply to the Counterclaim.

¹ This Counterstatement is lifted almost verbatim from briefing before the Court of Appeals and reproduced here for convenience. A full recitation of the relevant factual background is also contained in briefing before the Court of Appeals but not reproduced here.

Following discovery, both sides agreed there was no genuine dispute of material facts. Petitioners filed their Motion for Summary Judgment, with supporting exhibits, on January 22, 2024. (R. p. 91, Plaintiffs' Motion for Summary Judgment). Similarly, Respondents filed their cross-motion for Summary Judgment the following day, January 23, 2024. (R. p. 164, Defendants' Motion for Summary Judgment). Respondents subsequently filed a Memorandum of Law, with supporting exhibits, on March 29, 2024. (R. p. 165).

The matter proceeded to trial, non-jury, before the Honorable R. Scott Sprouse on April 9, 2024. The Court admitted all exhibits proffered by the parties without objection. Neither party presented testimony. The parties agreed to submit depositions of party witnesses into evidence, portions of which were also made part of the Record on Appeal. Both parties thoroughly argued their respective positions based on the record before the Court.

On April 26, 2024, Judge Sprouse issued an Order denying an injunction and denying Respondents' request for attorney fees. (R. p. 1, April 26, 2024, Order). In addition to jurisdictional findings, and relevant to issues under appeal, the Trial Court held:

- (1) Defendant Saad's boat docks are not violations of the Providence Point subdivision restrictive covenants. They are attached to the shoreline, which is owned by the U.S. Army Corp of Engineers.
- (2) Defendant Saad's walking across his lots to access these boat docks is not a violation of the restrictive covenants. Interpreting these restrictive covenants

in the manner sought by the Plaintiffs would lead to an absurd result that violates public policy in that it would unreasonably interfere with the free use of property.

- (3) There is no evidence that Defendant Saad's current use of his lots would constitute a nuisance or other violation of the Providence Point subdivision restrictive covenants.

Petitioners filed a Motion to Reconsider, Alter, or Amend on May 1, 2024, citing Rules 59 and 60, SCRPC. (R. p. 195). The trial court denied Petitioners' Motion by Form 4 Order filed May 2, 2024 (R. p. 12).

Petitioners timely sought appeal to the South Carolina Court of Appeals. After fully briefing the case, the parties participated in oral argument on November 12, 2025. The Court of Appeals filed its published opinion on February 18, 2026, affirming the trial court. Petitioners timely sought rehearing, which was denied, although the Court of Appeals did issue an amended opinion to correct a scrivener's error. Petitioners timely sought review before this Court.

ARGUMENT

In this case, Petitioners sought- and still seek- to prevent Respondents from having any use of their property. In support, they urged the Trial Court- and now this Court- to find the applicable covenants unambiguously prohibit use of property unless the owner resides thereon. The covenants contain no such requirements. This Court, like the Trial Court and the Court of Appeals, should refuse to adopt an unreasonable interpretation not required by language in the covenants, not supported by any authority in this State, and

that- if adopted- would constitute such an unreasonable interference with property use in violation of public policy.

The record is clear and largely undisputed. The parties simply disagree as to the implication of agreed facts. However, abundant authority supports the decision of the Trial Court and the Court of Appeals. Petitioners' essential argument is that this Court should adopt a distinction between recreational and residential usage of property and then graft such a distinction onto the covenants burdening property owners in this case. Petitioners have failed to identify any special or important issues that would justify this Court granting review consistent with Rule 242(b), SCACR. This Court should deny Certiorari and let the well-reasoned decision of the Court of Appeals stand

A. The Trial Court and Court of Appeals Correctly Addressed Usage of the Property within the Meaning of the Covenants.

Petitioners are correct: both the Court of Appeals and the Trial Court characterized this case as seeking to enjoin Respondent from walking across his property. That is an accurate characterization of the essence of this case. Respectfully, what Petitioners now complain about is that this is a non-serious view of the matter is instead merely a common-sense and serious view of a non-serious case. On this point, as elsewhere, Petitioners case is predicated on asking the courts to create a distinction between residential and recreational usage whereby a property owner would be prohibited from any usage of property subject to similar covenants if they failed to reside at the property. As more fully set forth below, no authority supports such a distinction.

Both courts below address the actual usage of the property at issue. Both courts noted that Respondent had utilities at his property and access docks adjacent to his land on

property owned by the U.S. Army Corp of Engineers. However, the courts below correctly concluded that Petitioners sought to prohibit the benign activity of walking across property to access such docks despite no such restriction within the covenants. As is clear from the record, Respondents' minimal usage of the property is consent with the usage of all other property owners subject to the same covenants except most- but not all- other owners reside on their respective properties.

B. The Courts Below Correctly Refused to Create a Distinction Between Residential versus Recreational Usage.

Respondents admit that they do not reside on their property and cannot do so. However, this is a distinction without a difference. The applicable covenants restrict usage to single-family residential purposes. This prohibition prevents all manners of conduct outside the scope of residential purposes. The same language does NOT require a property owner to reside on their property to make the same use as other property owners and Petitioners have failed to point to any language of the covenants requiring otherwise. The Courts below focused on distinguishing between commercial and residential purposes as all authorities cited by the parties pointed to the same distinction.

There are no reported South Carolina cases holding that property restricted to residential purposes prohibits recreational usage. Petitioners have failed to identify any authority to the contrary. Accordingly, the courts below correctly found that recreational usages are permissible even where covenants admittedly restrict property to residential purposes of which recreation would form a part.

Despite the absence of authority directly on point in this State, multiple jurisdictions have addressed precisely this issue. The North Carolina Court of Appeals recently

addressed a similar dispute between property owners in *Villazon v. Osborne*, 922 S.E.2d 498 (N.C. Ct. App. 2025).² In that case, like this case, lots in a lakefront community were limited by covenants which provided, inter alia, restrictions to usage other than “residential purposes.” *Id.* The Plaintiff in *Villazon* used her lot for lake access, kayak storage, and other identified recreational purposes. The North Carolina Court of Appeals correctly found “no reading of the [covenant] that supports [the defendants’] insistence that the phrase ‘residential purposes’ necessarily ‘requires habitation’” *Id.* at 509 [quote alterations here quoted from opinion by South Carolina Court of Appeals]. This holding was consistent with prior authority as North Carolina courts previously allowed municipal parking lots, in aid of recreational usage, on property restricted to residential use. *White v. Town of Emerald Isle*, 346 S.E.2d 176, 82 (N.C. App. 1986). The same court found that other jurisdictions had reached comparable results. *Id.*

Other jurisdictions addressing application of similar covenants under similar circumstances have reached results consistent with North Carolina Courts. Indiana confronted alleged violations of covenants restricting property to residential use where a homeowner constructed a full baseball practice area on an adjoining lot. *Bagko Development Co. v. Damitz*, 640 N.E.2d 67 (Ind. App. 1994). In that case, the homeowner installed substantial improvements and allowed a baseball team to use the constructed improvements for team practices consistent with covenants which prohibited uses other than residential. *Id.* As that Court explained, the homeowners did not lease their property or operate a business. Where the applicable covenants did not define the term

² The South Carolina Court of Appeals similarly cited *Villazon* as persuasive authority in its opinion below in this case.

"residential purposes", the court explained that "[r]esidential use is distinguishable from commercial or business use" and serves to "merely limit the use of the property to living purposes as distinguished from business or commercial purposes." *Id.* [additional citations omitted].

In the closest parallel to the facts of the instant case, New Hampshire Courts confronted allegations that use of an unimproved lot to access a dock, and thereafter a private island, violated residential purpose covenant restrictions. *Voedisch v. Town of Wolfeboro*, 136 N.H. 91, 612 A.2d 902, 905 (1992). In that case, other property owners alleged that use of an otherwise vacant lot solely for dock access violated residential use restrictions. *Id.* The court disagreed, explaining "[g]enerally covenants restricting the use of property to 'residential purposes' merely limit the use of the property to living purposes as distinguished from business or commercial purposes. [additional citation omitted]. The trial court found that the use of the dock is a usual residential use, regardless of whether there is a residence on the property..." *Id.* (emphasis added). The appellate court agreed and affirmed.

In this case, Petitioners seek to draw a distinction to benefit their preferred interpretation of covenants that finds no support in reported cases in this or other jurisdictions. Effectively, Petitioners request that this Court create new law which would compel a property owner to construct a residence to engage in activities within the classic definition of "residential purposes." If the architect of the covenants at issue in this case intended to require property owners to construct a residence as a condition of property usage, then they could have done so by including unambiguous language to that effect. In

the absence of plain language compelling a property owner to actual reside on their property, there is no basis for an artificial distinction which prohibits recreational usage by some property owners while leaving neighbors free to engage in identical behavior.

C. The Court of Appeals Correctly Held that Petitioners Abandoned their Argument Regarding Characterization of Usage.

As the Court of Appeals correctly found, Petitioners did not specifically cite any authority in support of its third issue on appeal- that the Trial Court mischaracterized usage. Respondents here would merely point out that this specific argument was subsumed within other points in the appeal and in the instant Petition. This Court may address the ruling regarding preservation as it sees fit, although it would not change the result. The Courts below each addressed all uses made by Respondents in their well-reasoned opinion. The failure to fully address all uses or potential usage does not change the result.

D. The Court of Appeals Accurately Addressed Actual Usage by Respondents.

On this point, Petitioners are again dependent on the preferred distinction between residential and residential usage fully addressed above. However, to the extent further argument is required, Respondents would point out that the Courts below both acknowledged and addressed that Respondents used their property to acquire docks, run utilities, park vehicles, and access docks. The Courts below characterized usage and the requested injunction as prohibiting walking as that was the essence of Petitioners' claim. The other passive usages, also recreational and consistent with the covenants, while afforded minimal attention were addressed. Petitioners have failed to explain how further attention to these points could or should change the result where none of the uses are

inconsistent with plain language in the applicable covenants. This Court needs look no further than the opinions below to see that each use was addressed in reaching the correct result.

E. The Court of Appeals Did not Need to Reach Public Policy Arguments

The Court of Appeals correctly declined to reach this issue. As Respondents did not violate the covenants, any decision about whether the covenants contravened public policy became moot.

In an abundance of caution, Respondents will briefly address public policy. Restrictive covenants in residential real estate are contracts. As such, covenants must be construed as contracts whereby the court affords language its plain and ordinary meaning.³ However, restrictive covenants are also historically disfavored, emanating “from the widely held view that society's best interests are advanced by encouraging the free and unrestricted use of land.” *Sea Pines Plantation Co. v. Wells*, 294 S.C. 266, 363 S.E.2d 891 (1987) (additional citation omitted).

Thus, to enforce a restrictive covenant, a party must show that the restriction applies to the property either by the covenant's express language or by a plain unmistakable implication. [additional citations omitted]. The rule of strict construction governing restrictive covenants does not preclude their enforcement. A restrictive covenant will be enforced if the covenant expresses the party's intent or purpose, and this rule will not be used to defeat the clear express language of the covenant.[additional citations omitted]. [A] restrictive covenant is a voluntary contract between the parties. Courts shall enforce such covenants unless they are indefinite or **contravene public policy**. *Sea Pines Plantation Co. v. Wells*, 294 S.C. 266, 363 S.E.2d 891 (S.C. 1987) (emphasis added).

In this case, Respondents do not challenge the covenants. Similarly,

³ See generally *Taylor v. Lindsey*, 332 S.C. 1, 498 S.E.2d (1998).

Respondents have never argued that the applicable covenants, as written, violate public policy. Respondents argued, and the Trial Court found, that the interpretation of the subject covenants as urged by Petitioners- if adopted- would violate public policy. (R. p. 6, Order at p. 6).⁴ If Petitioners prevail, a property owner subject to similar covenants would be compelled to build a residence merely to enjoy the same rights as his neighbors subject to the same covenants. If Petitioners prevail, an unbuildable lot in a development restricted to “residential purposes” would be an unusable lot. In Petitioners preferred interpretation, a potential owner of property subject to similar restrictive covenants would be compelled to make immediate plans to build- or face exclusion from his own property based on Petitioners’ view of “residential purposes.” That view, and not the language of the covenants, would lead to absurd results in contravention of public policy.

At trial and on appeal, Petitioners have hardly argued to the contrary. Rather, Petitioners provided multiple citations in support of the undisputed proposition that residential purposes exclude commercial use.⁵ Similarly, single-family uses clearly prohibit multi-family usage.⁶ The overriding issue is not contractual interpretation, ambiguity, or disputed facts. Rather, this case involves attempts to impose unusual

4 As the Trial Court explained, Appellants (Plaintiffs below) took the position that “any use of an of any empty subdivision lot other than maintenance would constitute an impermissible use under the restrictive covenants.” (R. 7, Order at p. 4). Appellants specifically argued that mere walking across property, picnics, or even birdwatching would constitute a hobby or recreation and thus- in their view- violate the residential purposes restriction of the Covenants.

5 See *Kinard v. Richardson*, 407 S.C. 247, 754 S.E.2d 888 (Ct. App. 2014) (finding commercial grazing lease beyond residential use); *Maxwell v. Smith*, 228 S.C. 182, 89 S.E.2d (1955) (holding that construction of commercial structures to support off-site business violated residential use restrictions even where commercial operation ceased but commercial accoutrements remained).

6 See *Easterly v. Hall*, 256 S.C. 336, 182 S.E.2d 671 (1971) (enforcing covenants restricting property to single-family use to prohibit completion of duplex if occupied by more than one family).

interpretations of common covenants beyond the bounds of plain language, common sense, or precedent. As the Court of Appeals has previously explained,

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. *Floyd v. Dross*, 442 S.C. 79, 897 S.E.2d 191, 198 (Ct.App. 2024) (additional citations omitted).

In this case, the dispute between the parties arose when Petitioners sought to impose requirements beyond the plain language of restrictive covenants and application of terms afforded their ordinary usage. Under the circumstances, the Trial Court correctly held that such an interpretation would violate public policy.

This Court does not need to address public policy as the balance of the opinion below was dispositive. To the extent this Court addresses the issue, Respondents agree with the Trial Court: the extreme and unwarranted interpretation urged by Petitioners would lead to enforcement that contravenes public policy in conflict with precedent.

CONCLUSION

This case concerns restrictive covenants for residential development that are undisputedly consistent with restrictions in similar developments. The peculiarly absurd result sought by Petitioners does not concern any unusual language in the covenants themselves but rather the interpretation urged by Petitioners. The Courts below enforced the covenants as contracts, declining to impose requirements not found within the four corners of such contract. Petitioners continue to seek something more. Petitioners seek to require building, and occupancy, of a residence as a condition of property use.

Regardless of how Petitioners may feel about the result below, the Trial Court and Court of Appeals correctly refused to draw unwarranted distinctions to prohibit Respondents from using their property. The courts below each afforded the matter serious attention but decline to take seriously a request by Petitioners to prohibit their neighbor from engaging in the same behavior as all other property owners based on an unusual interpretation of covenants. There is no error in the decisions below and no issue of such importance to warrant further review before this Court. The Court should deny the Petition and remand the case for entry of final judgment.

Respectfully submitted,

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