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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas
The Honorable Maite Murphy, Circuit Court Judge

Case No. 2024-CP-18-01459
Appellate Case No.: 2025-001299

Attia Elbadawy and Lynne Chatlos..... Appellants,

v.

D.R. Horton, Inc.....Respondent.

RESPONDENT'S INITIAL BRIEF

s/Mark A. Bible, Jr.

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STATEMENT OF THE ISSUES ON APPEAL

I. Did the lower court properly deny Appellants' motion for temporary injunction and/or preliminary injunction?

INTRODUCTION; BACKGROUND FACTS

Appellants are the owners and/or residents of 493 Wise Road, Summerville, SC 29483 (the "Appellants' Property"). (Order at p.2, Elbadawy et al. v. D.R. Horton, Inc., C.A. No. 2024-CP-18-01459 (May 6, 2025)). The central focus of the claims asserted in the Appellants' September 5, 2024 complaint (the "Complaint"), is a road or street commonly referred to as "Wise Road" a/k/a "Wise Lane" (the "Subject Road"). (Compl. pp. 1-3, Elbadawy et al. v. D.R. Horton, Inc., C.A. No. 2024-CP-18-01459 (Sept. 5, 2024)). The northern boundary of Appellants' Property terminates adjacent to and/or along the Subject Road. (Ans. of D.R. Horton, Inc., Ex. G, Elbadawy et al. v. D.R. Horton, Inc., C.A. No. 2024-CP-18-01459 (Oct. 11, 2024)). The Appellants' Property forms a portion (two lots) of the Twin Lakes Subdivision in Dorchester County, the same having been platted by and/or on behalf of American Mortgage & Investment Co. ("AMI") in 1967 as reflected on plat recorded in the Office of the Register of Deeds for Dorchester County in Plat Book 16, at Page 85 (the "AMI Plat"). (Ans. of D.R. Horton, Inc., Ex. C, Elbadawy et al. v. D.R. Horton, Inc., C.A. No. 2024-CP-18-01459 (Oct. 11, 2024)). Notably, the Subject Road is identified in the AMI Plat as having been dedicated to the public (i.e., the Road is not privately owned). *Id.* The deed conveying title to the Appellants' Property incorporates the AMI Plat and further provides that the conveyance of the Appellants' Property is "subject to easements, restrictions, covenants, and conditions of record, including matters shown on recorded plats." (Ans., Ex. B, Elbadawy et al. v. D.R. Horton, Inc., C.A. No. 2024-CP-18-01459 (Oct. 11, 2024)). Properties other than the Appellants' Property receive access to their properties through use of the Subject Road.

Respondent is the owner of real property bearing Dorchester County Tax Map No. 134-00-00-039 (the “DRH Tract”). The DRH Tract is located adjacent to and in the vicinity of the Appellants’ Property and the Subject Road. (Order at p.3, Elbadawy et al. v. D.R. Horton, Inc., C.A. No. 2024-CP-18-01459 (Cir. Ct. May 6, 2025)). The DRH Tract was conveyed to DRH by a land holding subsidiary of BRD Land & Investment, LLC (“BRD”). (K. Harper Aff., ¶ 2, January 17, 2025). Prior to acquisition of the DRH Tract, BRD (a land development company) caused engineering and land planning to be performed and approved by Dorchester County government officials (the “County”) as necessary to subdivide and develop the DRH Tract. (K. Harper Aff., ¶¶ 4-8, January 17, 2025). Further, BRD applied for and received an encroachment permit from the County authorizing, *inter alia*, installation of sewer and water infrastructure for the use and benefit of development of the DRH Tract (the “Permit”). (K. Harper Aff., ¶ 8, January 17, 2025). The County admitted that it issued the Permit upon which Respondent acted and began infrastructure construction along the Subject Road. (Ans. of County, ¶13, Elbadawy et al. v. D.R. Horton, Inc., C.A. No. 2024-CP-18-01459 (June 17, 2025)).

After acquiring title to the DRH Tract and having received assignment of the Permit and subdivision approvals from BRD, DRH commenced efforts to develop the DRH Tract in accordance with and/or consistent with the County approvals and Permits. (C. Hill Aff., ¶¶ 12-13, January 17, 2025). In furtherance of developing the DRH Tract, efforts to install County permitted and approved infrastructure commenced along the Subject Road in the vicinity of Appellants’ Property. On or before May 2024, Appellants caused a metal gate (the “Gate”) to be installed near the intersection of Weir Street and the Subject Road. Installation and the continued use of the Gate by Appellants effectively prevented DRH from operating along the Subject Road as a general

member of the public and adversely affected installation of essential infrastructure for development of the DRH Tract as approved by the County.

Appellants filed the Complaint against Respondent on September 5, 2024; the Complaint was filed contemporaneous with the Subject Motion. The Complaint generally contained allegations that during the Appellants' ownership of the Appellants' Property: (i) the Appellants were allegedly informed that the Subject Road was not a County road; (ii) the County would not agree to pave or otherwise improve the Subject Road; (iii) that the Appellants application for installation of public sewer to serve the Subject Property was denied by the County and the Appellants were left to install a site specific septic system for sewage disposal on the Appellants' Property; (iv) that "Wise Road is a County Road-Privately maintained"; (v) that the Appellants volunteered efforts to improve the Subject Road; (vi) that on or about June 26, 2024 construction equipment was observed on the Subject Road making efforts to install new sewer and/or water pipes for service to the DRH Tract and that Appellants directed such work to cease; and (vii) that Respondent has no rights to use the Subject Road and/or property comprising the Subject Road for installation of water and sewer infrastructure improvements in furtherance of developing the DRH Tract. (Compl. pp. 1-3, Elbadawy et al. v. D.R. Horton, Inc., C.A. No. 2024-CP-18-01459 (Sept. 5, 2024)). The Subject Motion purportedly seeks that the Respondent be temporarily enjoined (during the pendency of the underlying action) from access or use of the property comprising the Subject Road for installation of water and/or sewer infrastructure, but only contained the following averment(s):

"Trespassing on my property illegal permit to work on Wise Lane, which is a private driveway privately maintained. July 26, 2024 incidents home invasion,

sexually disrespected my wife, destroyed trees, my road, threatening us threw my ex-lawyer by, if we do not let them use Wise Lane, they will have us put in jail.”

(Mot. for Injunction., p.1, Elbadawy et al. v. D.R. Horton, Inc., C.A. No. 2024-CP-18-01459 (Cir. Ct. Sept. 5, 2024)).

Respondent filed a Verified Answer and Counterclaims against Appellants on October 11, 2024 (the “Answer”), therein asserting claims for permanent injunction against Appellants (seeking to enjoin Appellants from blocking the Subject Road with the Gate and/or from otherwise interfering with Respondent’s development activities, the same being performed in accordance with County permits and approvals). (Ans. pp. 2-18, Elbadawy et al. v. D.R. Horton, Inc., C.A. No. 2024-CP-18-01459 (Cir. Ct. Oct. 11, 2024)).

STATEMENT OF THE CASE

As stated in the Appellants’ June 27, 2025 Notice of Appeal, the Appellants appeal the May 6, 2025 Order of the Lower Court (the “Subject Order”). (NOA., Elbadawy et al. v. D.R. Horton, Inc., C.A. No. 2024-CP-18-01459 (Ct. App. June 27, 2025)). Pursuant to the Subject Order, the Lower Court denied Appellants’ September 5, 2024 Motion for Temporary Injunction and/or Preliminary Injunction (the “Subject Motion”). (Order at pp.4-8, Elbadawy et al. v. D.R. Horton, Inc., C.A. No. 2024-CP-18-01459 (Cir. Ct. May 6, 2025)). The Lower Court held, *inter alia*: (i) Appellants “failed to offer any credible evidence, materials or any other supporting information tending to substantiate the claims that they have or otherwise may in the future sustain irreparable harm”; (ii) Appellants “failed to present or offer any credible evidence, materials or any other supporting information tending to show they will or may succeed on the merits of the litigation”; and (iii) Appellants “failed to meet its burden and show this Court that remedies at law, such as monetary damages, are inadequate”. (Order at pp. 4-7, Elbadawy et al. v. D.R. Horton, Inc., C.A. No. 2024-CP-18-01459 (Cir. Ct. May 6, 2025)).

The Subject Motion was argued in the Court of Common Pleas for Dorchester County, South Carolina (the “Lower Court”) before the Honorable Maite Murphy on January 21, 2025 (the “Hearing”). The Hearing on the Subject Motion was conducted through the Lower Court’s virtual courtroom hosted via WebEx. Prior to the Hearing on the Subject Motion, the following documents had been filed with the Lower Court by the parties:

- (i) The Appellants’ Complaint and the Subject Motion filed September 5, 2024. No exhibits were filed with the Subject Motion, however, the Appellants did file Exhibits A-C with their Complaint. Exhibits A-C to the Complaint include (a) a letter from Dorchester County to Attia Elbadawy verifying the address to the Appellants’ property; (b) a copy of a portion of an older plat showing the Appellants’ property; and (c) a copy of what appears to be Dorchester County GIS imagery of the Appellants’ property and/or adjacent property owned by Respondent;
- (ii) The Respondent’s answer, counterclaims and third-party complaint (“Answer”) filed October 11, 2024 with Exhibits A-H thereto. Exhibits A-H to the Answer include: (a) an annotated copy of the Complaint to provide clarity in reference to Respondent’s Answer; (b) a recorded copy of Appellants’ deed to the Appellants’ Property; (c) a recorded copy of the 1967 AMI Plat showing the Appellants’ Property and the Subject Road; (d) applications for and approvals for encroachment permits for construction of new sewer force main extension and water main extensions through or across the Subject Road; (e) a recorded copy of Respondent’s deed to the DRH Tract; (f) portions of Respondent’s subdivision development plans; (g) screenshots of Dorchester County GIS imagery showing the Appellants’ and Respondent’s respective properties in relation to the Subject Road; and (h) a copy of engineering and/or design documents from Stantec Consulting with a photograph showing the Subject Road and a gate constructed across the Subject Road by Appellants;
- (iii) Appellants’ reply to Respondent’s Answer with “Exhibit 4” including subparts. “Exhibit 4” and subparts to the Appellants reply to the Answer includes approximately forty-three pages of “Exhibits” as follows: (a) a copy of a July 22, 2022 email from Wendy Creel (Dorchester County employee) (Exhibit 4.1); (b) a September 3, 2024 email from Derek McCoy (Dorchester County employee) evidencing the Road is a public right of way (Exhibit 4.2); (c) an August 22, 2024 email chain from Landon Brock (Appellants’ former counsel) conveying to Appellants communications between Mr. Brock and Dorchester County employees including Derek McCoy (Exhibits 4.3-4.6); (d) a September 29, 1987 letter from Dorchester County planning board to Marcia Wise naming the Road “Wise Lane” (Exhibit 4.7); (e) a copy of a survey or plat of unknown origin (Exhibit 4.8); (f) a copy of an email chain between Appellant, Attia Elbadawy, and Christopher Hill

(Respondent employee) from June 16, 2024 (Exhibit 4.9-4.10); (g) a copy of a November 1, 2024 e-mail from Attorney Christian Wall to Appellant, Attia Elbadawy, evidencing legal opinions which conflict with Appellants' claims and position (Exhibit 4.11); (h) an August 30, 2024 email chain from Landon Brock (Appellants' former counsel) stating legal opinions which conflict with Appellants' claims and position (Exhibit 4.12); (i) a September 10, 2024 email chain between Appellant, Attia Elbadawy, and Respondent's Attorney, Thomas Harper (an outside counsel for Respondent), discussing the dispute over access and use of the Subject Road by Respondent (Exhibit 4.13); (j) undated and unconfirmed citations to §38-21, §38-22, §38-23, §38-24, §38-25, §38-26, §38-27, §38-28, §38-29, §38-30, and §38-31 of the Dorchester County code of ordinances (Exhibit 4.14-4.25); (k) a citation to S.C. Code of Laws §56-5-450 (2012) (Exhibit 4.26); (l) a citation to S.C. Code of Laws §6-29-1170 (2019) (Exhibit 4.27); (m) undated and unconfirmed citations to §38-225 of the Dorchester County code of ordinances (Exhibit 4.28-4.30); (n) an undated photograph of the Road and the gate or fencing blocking access to the Road with a posted "No Trespassing" sign (Exhibit 4.31); (o) a copy of a September 5, 2024 and September 18, 2024 Dorchester County Sheriff's Office Incident Report (Exhibit 4.32-4.40); (p) an undated photograph of a prescription medication bottle (Exhibit 4.41); and (q) a compilation of several photographs showing heavy equipment and hand written notes by Appellants (Exhibit 4.42-4.43);

- (iv) Appellants "Notice of Filing" filed January 10, 2025 containing Appellants Exhibit 5 (including subparts) without any description or reference to a motion or other pleadings such exhibit was submitted in support of or in opposition to any pending motion. Appellants' "Exhibit 5", as the same was entered on January 10, 2025, includes approximately twenty-one (21) pages of "Exhibits" as follows: (a) a copy of an April 24, 2019 email chain between Dorchester County Public Works Department and Appellant, Attia Elbadawy (Exhibit 5.1); (b) a purported copy of an January 31, 2019 email chain between Dorchester County Public Works Department and Appellant, Attia Elbadawy (Exhibit 5.2); (c) a purported copy of a November 19, 2021 email between Kacy Byrd (purported Dorchester County employee) and Appellant, Attia Elbadawy (Exhibit 5.3); (d) a purported citation S.C. Code of Laws §56-5-450 (2012) (Exhibit 5.4); (e) a copy of a July 22, 2022 email from Wendy Creel (Dorchester County employee) (Exhibit 5.5; same as Exhibit 4.1); (f) a purported November 19, 2021 email chain between Appellant, Attia Elbadawy and Kacy Byrd (Exhibit 5.6); (g) a copy of an October 10, 2023 Coastal Zone Consistency Certification Request executed by Stantec Consulting (Exhibit 5.7); (h) A copy of an October 10, 2023 Notice of Intent to develop letter from Stantec Consulting (Exhibit 5.8); (i) a copy of an August 30, 2024 email chain from Landon Brock (Appellants' former counsel) stating legal opinions which conflict with Appellants' claims and position (Exhibit 5.9; same as Exhibit 4.12); (j) an unverified recitation of purported law on expanding an easement (Exhibit 5.10); (k) a copy of a January 6, 2025 email between Appellant, Attia Elbadawy and SCDOT customer support (Exhibit 5.11); (l) an undated, incomplete, and unverified portion of engineering designs with handwritten notes of Appellant

(Exhibit 5.12); (m) unofficial citations to purported ordinance §9.6 of Dorchester County ordinances (Exhibit 5.13); (n) a copy of a letter dated February 17, 2023 verify Appellants' property address (Exhibit 5-14; same as Appellants' Reply to Respondent's Answer, Exhibit A); (o) a purported copy of a January 10, 2023 permit for construction of an engineered septic system for Appellants' property (Exhibit 5.15); (p) arguments written by Appellants in support of Appellants' claims (Exhibit 5.16-5.18); (q) imagery or mapping details purporting to show locations of Appellants' Property and neighboring properties including the DRH Tract (Exhibit 5.19); and (r) a partial copy of the 1967 AMI Plat (Exhibit 5.20); and

- (v) Respondent's January 17, 2025 memoranda, exhibits, and affidavits in opposition to the Subject Motion ("Memo. In Op."). The Exhibits to Respondent's Memo. in Op. include the following: (a) Exhibit 1(a) – May 30, 2024 through June 3, 2024 email communications between Stantec Consulting and employees of Dorchester County regarding removal of Appellants' gate blocking access to the Road and Exhibit 1(b) a September 3, 2024 email between Appellant, Attia Elbadawy, and Dereck McCoy (Dorchester County Employee) stating the Subject Road is a public right of way and not a privately owned road; (b) the January 17, 2025 Affidavit of Chris Hill (Respondent employee) with Exhibit 1 (Appellants' deed), Exhibit 2 (a recorded copy of the 1967 AMI Plat), Exhibit 3 (July 16, 2024 meeting minutes for meeting held between Stantec Consulting, Dorchester County, and Respondent's employees), and Exhibit 4 (a copy of engineering and/or design documents from Stantec Consulting with a photograph showing the Subject Road and a gate constructed across the Subject Road by Appellants); (c) the January 17, 2025 Affidavit of Kelsey Harper (Respondent employee) with Exhibit 1 (Dorchester County encroachment permit with April 24, 2024 issued date with application records) and Exhibit 2 (a recorded copy of the 1967 AMI Plat).

(Order at pp. 2-7, Elbadawy et al. v. D.R. Horton, Inc., C.A. No. 2024-CP-18-01459 (Cir. Ct. Dec. 17, 2025)).

During the Hearing, Appellants and Respondent made oral arguments in support of their respective positions. Respondent's arguments in opposition to the Subject Motion were supported by the materials set forth in Respondent's Answer and January 17, 2025 Memorandum in Opposition to the Subject Motion. (Memo. in. Op. at pp.1-20, Elbadawy et al. v. D.R. Horton, Inc., C.A. No. 2024-CP-18-01459 (Cir. Ct. Jan. 17, 2025); K. Harper Aff., January 17, 2025; C. Hill Aff., January 17, 2025). Appellants did not file any affidavits or memoranda in support of the Subject Motion nor did the Appellants move to introduce exhibits during the Hearing or move to

supplement the Lower Court's record with additional briefs or relevant records. Furthermore, at the Hearing the Appellants failed to argue or establish any elements which tend to show entitlement to the preliminary injunction and/or restraining order sought in the Subject Motion.

Despite the Appellants' failure to present or introduce supporting memoranda, documents, materials or other evidence in support of the Subject Motion prior to the Hearing on the same, Appellants made several post-Hearing filings without receiving leave of Lower Court to supplement the Lower Court's record prior to ruling on the Subject Motion. (Order at pp.10-11, Elbadawy et al. v. D.R. Horton, Inc., C.A. No. 2024-CP-18-01459 (Cir. Ct. Dec. 17, 2025)). After entry of the Subject Order, the Appellants moved before the Lower Court for reconsideration of the same pursuant to Rule 59(e), *SCRCP* (the "Motion to Reconsider"). (Mot. Reconsideration at pp. 1-159, Elbadawy et al. v. D.R. Horton, Inc., C.A. No. 2024-CP-18-01459 (Cir. Ct. May 14, 2025)). Ultimately, the Appellants' Motion to Reconsider was denied by Order of the Lower Court entered on June 23, 2025; the Lower Court found no error of law in the Subject Order. (Order at p. 1, Elbadawy et al. v. D.R. Horton, Inc., C.A. No. 2024-CP-18-01459 (Cir. Ct. June 23, 2025)). This appeal followed. (NOA., Elbadawy et al. v. D.R. Horton, Inc., C.A. No. 2024-CP-18-01459 (Ct. App. June 27, 2025)).

Appellants have taken the "kitchen-sink" approach to this appeal by setting forth several issues presented, the substance of which include matters different than those presented to the Lower Court in the Subject Motion and Hearing on the same. Many of the arguments advanced by the Appellants were not properly presented to the Lower Court for consideration when presiding over the Subject Motion or were otherwise nondeterminative in the context of the Subject Motion. Specifically, the Appellants complain the Lower Court erred in denying the Subject Motion by or because, *inter alia*: (i) "no evidence established that Wise Lane was ever accepted by Dorchester

County as a public road”; (ii) the Lower Court failed “to recognize that Respondent’s entry onto Wise Lane... constituted a trespass under South Carolina law; (iii) the Lower Court failed to consider “substantial evidence presented by Appellants”, albeit the majority of the Appellants’ submissions were made post-Hearing and without leave of court; (iv) the Lower Court denied Appellants “meaningful opportunity to be heard”; and (v) the Lower Court improperly relied on affidavits submitted in opposition to the Subject Motion by Respondent. (Appellant Br. at p. III). The arguments advanced by the Appellants are mostly focused on the merits of the case rather than the elements that must be shown to justify entitlement to the injunction sought through the Subject Motion.

In addition to setting forth several arguments which were not properly before the Lower Court at the Hearing or which were not a part of the Subject Motion, the Appellants blindly ignore that they failed to meet their burden of proof and did not present cogent arguments or timely introduce reliable evidence which tends to prove or establish: (i) Appellants would suffer an irreparable harm if the injunction were not granted; (ii) that the Appellants’ claims facially have a likelihood of success on the merits; and (iii) that granting of an injunction is warranted due to the absence of adequate remedies at law. *See e.g., Shapemasters Golf Course Builders, Inc. v. Shapemasters, Inc.*, 60 S.C. 473, 480, 602 S.E.2d 83, 87 (Ct. App. 2004); *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004); *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 50-51, 674 S.E.2d 505, 508-09 (Ct. App. 2009). Without having carried their burden of proof, the Lower Court was required to deny the Subject Motion.

The Lower Court’s findings and conclusions were thoughtful, reasoned, sound and based upon applicable case law. The issues the Appellants now raise on appeal were not properly preserved, were not presented in the context of the Subject Motion, and/or were not presented in a

manner which would satisfy the Appellants' burden of proof. Appellants' appeal should, therefore, be rejected and the Subject Order should be affirmed.

STANDARD OF REVIEW

Actions for injunctive relief are equitable in nature. *See Wiedemann v. Town of Hilton Head*, 344 S.C. 233, 236, 542 S.E.2d 752, 753 (Ct. App. 2001). In equitable actions, the appellate court may review the record and make findings of fact in accordance with its own view of the preponderance of the evidence. *See Grosshuesch v. Cramer*, 367 S.C. 1, 4, 623 S.E.2d 833, 834 (2005). An order granting or denying an injunction is reviewed for abuse of discretion. *See County of Richland v. Simpkins*, 348 S.C. 664, 560 S.E.2d 902 (Ct. App. 2002). An abuse of discretion occurs when the trial court's decision is unsupported by the evidence or controlled by an error of law. *Id.* An injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff. *See Scratch Golf Co. v. Dunes W. Residential Golf Props.*, 361 S.C. 117, 121, 603 S.E.2d 905, 907-08 (2004) (internal citations omitted). For a preliminary injunction to be granted, the plaintiff must establish that (1) it would suffer irreparable harm if the injunction is not granted; (2) it will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law. *Id.*

The Appellants' Complaint must allege facts sufficient to constitute a cause of action for injunction and demonstrate it is reasonably necessary to protect the legal rights of the Appellants pending in the action. *See Bookhart v. Cent. Elec. Power Coop., Inc.*, 219 S.C. 414, 432-33, 65 S.E.2d 781, 789 (1951). "For a Court to grant an injunction, a mere assertion of irreparable harm alone is insufficient to warrant an injunction. *See Shapemasters Golf Course Builders, Inc. v. Shapemasters, Inc.*, 60 S.C. 473, 480, 602 S.E.2d 83, 87 (Ct. App. 2004). Further, Rule 65(c), *SCRCP*, requires the party seeking injunctive relief to post a bond:

“Except in divorce, child custody and non-support actions where the giving of security is discretionary, no restraining order or temporary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained... A surety upon a bond or undertaking under this rule submits himself to the jurisdiction of the court and irrevocably appoints the clerk of court as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion without necessity of an independent action.”

Rule 65(c), SCRPC.

In *Lyons v. Fid. Nat'l Title Ins. Co.*, 415 S.C. 115 (2015) the South Carolina Court of Appeals held that an issue raised for the first time in a Rule 59(e) motion is not preserved for appellate review if it could have been presented prior to the judgment. The court emphasized that a party may not use a Rule 59(e) motion to reconsider, alter, or amend a judgment as a vehicle to raise arguments that were available but not presented earlier. *Id*; see also, *Elam v. S.C. DOT*, 361 S.C. 9, 22, 602 S.E.2d 772, 779 (2004). It is well settled that an issue may not be raised for the first time in a post-trial motion. *S.C. DOT v. First Carolina Corp.*, 372 S.C. 295, 301-02, 641 S.E.2d 903, 907 (2007) (internal citation omitted). Further, it is a litigant's duty to bring to the court's attention any perceived error, and the failure to do so amounts to a waiver of the alleged error. *Parks v. Morris Homes Corp.*, 245 S.C. 461, 471, 141 S.E.2d 129, 134 (1965). Additionally, “[i]t is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.” *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). “There are four basic requirements to preserving issues at trial for appellate review: the issue must have been (i) raised to and ruled upon by the trial court; (ii) raised by the appellant; (iii) raised in a timely manner; and (iv) raised to the trial court with sufficient specificity.” *Jean Hoefer Toal et al., Appellate Practice in South Carolina* 57 (2d ed. 2002).

DISCUSSION

I. THE COURT DID NOT ABUSE ITS DISCRETION NOR ERR IN DENYING APPELLANTS' MOTION FOR TEMPORARY INJUNCTION AND/OR PRELIMINARY INJUNCTION

As noted above, the Appellants have the burden of satisfying three essential elements prior to injunctive relief being granted by the Lower Court. Specifically, the Appellants must meet their burden establishing:

- (1) they would suffer irreparable harm if the injunction is not granted;
- (2) they will likely succeed on the merits of the litigation; and
- (3) there is an inadequate remedy at law.

Scratch Golf Co. v. Dunes W. Residential Golf Props., 361 S.C. 117, 121, 603 S.E.2d 905, 907-08 (2004). The Appellants failed to meet their burden and, consequently, the Lower Court did not abuse its discretion by denying the Subject Motion.

Irreparable Harm

The Appellants fail to advance any cogent arguments which tend to establish or show the Lower Court abused its discretion or otherwise made an error in law in holding the Appellants did not establish that they would suffer irreparable harm if the Subject Motion were not granted. In fact, “harm” is mentioned only one time in the Appellants’ initial brief and the Appellants only make reference to “damage” in the context that the Respondent’s operations along the Subject Road are broadly alleged to have “damaged” the Appellants’ Property. (Appellant Br. at pp. 8, 10-11). To satisfy the “irreparable harm” element of a preliminary injunction, the Appellants must have demonstrated that they will suffer harm that cannot be adequately remedied by monetary damages or other legal remedies. The harm must be immediate and substantial, not speculative or hypothetical. *See, e.g., AJG Holdings, LLC v. Dunn*, 382 S.C. 43 (2009); *Grosshuesch v. Cramer*,

367 S.C. 1 (2005). Appellants have failed to timely or properly present reliable evidence or arguments establishing the “irreparable harm” element.

Appellants have loosely argued that they have been and/or will be “harmed”, but not irreparably, in the event Respondent and agents, employees, representatives and/or contractors thereof are permitted to access or encroach upon the Subject Road for installation of water and sewer infrastructure for the benefit of the DRH Tract. Appellants contend that the harm flowing from the alleged encroachments and/or infrastructure construction may include, *inter alia*: (i) Appellants temporarily being precluded access to the Subject Road during Respondent’s infrastructure construction; (ii) Appellants being temporarily precluded from access to the Appellants’ Property during Respondent’s infrastructure construction; (iii) that Respondent’s performance of infrastructure construction in or along the Subject Road will result in physical harm or damage the Appellants and/or their Property; and (iv) Appellants being precluded from unencumbered use and possession of property it claims to own (i.e., the Subject Road). These arguments speculate as to damages that may or may not be sustained, ignore that monetary damages could adequately address any actual and proven harm, and were unsupported by affidavits or other reliable evidence at the time of the Hearing.

Likelihood of Success on the Merits

The Appellants must make a *prima facie* showing that they are likely to prevail in the underlying litigation. This does not require proving the case in full but rather demonstrating that there is a reasonable probability of success based on the evidence presented. *See, e.g., Compton v. S.C. Dep’t of Corr.*, 392 S.C. 361 (2011); *AJG Holdings, LLC v. Dunn*, 382 S.C. 43 (2009); *Strategic Res. Co. v. BCS Life Ins. Co.*, 367 S.C. 540 (2006); *Grosshuesch v. Cramer*, 367 S.C. 1 (2005). The Appellants again failed to timely argue, present or offer credible evidence, materials,

or any other supporting information tending to show they will or may succeed on the merits of the underlying litigation. The Appellants offered no credible or verifiable evidence that: (i) the Subject Road was privately owned (in fairness, evidence was submitted that the Subject Road was privately maintained to some extent); (ii) the Appellants have exclusive rights of access, use, and/or control of the Subject Road; or (iii), the Appellants possess any legal right to preclude access and/or use of the Subject Road such that the County had no rights to issue the Permit(s) or that Respondent had no right to access and make use of the Road for infrastructure construction permitted by the County.

No affidavits were timely submitted by the Appellants in support of this element. Moreover, while the Appellants have complained they were deprived meaningful opportunity to prepare for the Hearing, they failed to request leave of the court to supplement the materials submitted in support of the Subject Motion and failed to demonstrate a likelihood of success on the merits when the Respondent submitted evidence that the County issued permits for its construction along the Subject Road and further offered evidence that the Appellants do not have exclusive rights of ownership or possession over the Subject Road. (Memo. in Op. at pp.1-20, *Elbadawy et al. v. D.R. Horton, Inc.*, C.A. No. 2024-CP-18-01459 (Cir. Ct. Jan. 17, 2025); *K. Harper Aff.*, January 17, 2025; *C. Hill Aff.*, January 17, 2025). Appellants have failed to meet their burden of proof and the second element, “likelihood of success on the merits,” was not satisfied.

Inadequacy of Remedies at Law

The final element of a temporary injunction or preliminary injunction is that there is no adequate remedy of law. The Appellants must show that monetary damages, restitution, or other legal remedies would not sufficiently address the harm they would suffer if the Subject Motion were denied. This element ensures that injunctive relief is reserved for situations where legal

remedies are inadequate. *Scratch Golf Co. v. Dunes West Residential Golf Props.*, 361 S.C. 117 (2004).

In this case, were the Appellants to prevail on the merits, legal remedies in the form of monetary damages or restitution against Respondent would adequately compensate the Appellants for their damages, if any are proven. The “damages” claimed by Appellants are most succinctly set forth in their Motion for Reconsideration. However, it is important to recognize that at the time of the Hearing, the Appellants failed to articulate any damages which could not be addressed by adequate remedies at law. Specifically, following entry of the Order, the Appellants argued they have or will sustain the following damages: (i) a decrease in property value, increase in traffic, and harm to Appellants’ “cat sanctuary” of the Subject Road is public; (ii) deforestation of the DRH Tract has caused flooding that damaged the Appellants’ Property; and (iii) “financial and emotional harm, including medical injuries and distress from Defendant’s actions.” (Mot. Reconsideration at pp. 1-15, Elbadawy et al. v. D.R. Horton, Inc., C.A. No. 2024-CP-18-01459 (Cir. Ct. May 14, 2025)). The Appellants offered no evidence tending to prove or substantiate: (i) a reduction in value of the Appellant’s Property; (ii) an increase in traffic is likely to result from Respondent’s installation of water and sewer infrastructure beneath the Subject Road; (iii) that Respondent’s infrastructure construction along the Subject Road has any non-speculative adverse impact on the Appellants’ feral “cat sanctuary”; (iv) damage sustained to the Appellants or their Property causally connected with development of the DRH Tract; or (v) any non-speculative financial or emotional harm causally connected to Respondent’s infrastructure construction along the Subject Road as permitted by the County.

Adequate remedies at law, specifically monetary damages or restitution, would adequately address the issues and the damages complained of by Appellants were they to succeed on the merits

of the underlying action. Further, many of the claimed damages articulated by the Appellants are speculative and were not timely supported by reliable evidence, documents, or affidavits. Because the Appellants have failed to meet their burden and show the Lower Court that remedies at law are inadequate, the Subject Motion was properly denied by the Lower Court.

II. THE APPELLANTS DID NOT PRESERVE MATTERS FOR APPEAL AND RAISED MATTERS WHICH ARE TO BE DECIDED ON THE MERITS

As set forth in the Respondents' Statement of the Case, the Appellants failed to submit any memoranda of law in advance of the Hearing on the Subject Motion. (Ord. at pp. 2-8, Elbadawy et al. v. D.R. Horton, Inc., C.A. No. 2024-CP-18-01459 (Cir. Ct. May 6, 2025)); (Ord. at pp. 2-10, Elbadawy et al. v. D.R. Horton, Inc., C.A. No. 2024-CP-18-01459 (Cir. Ct. Dec. 17, 2025)). Moreover, Appellants did not move to introduce evidence at the Hearing or request the opportunity to supplement the Lower Court's record by post-Hearing briefs, affidavits, or other records. At the time of the Hearing, the Appellants only filed limited documents or materials, none of which were filed expressly in support of the Subject Motion. (Ord. at pp. 2-7, Elbadawy et al. v. D.R. Horton, Inc., C.A. No. 2024-CP-18-01459 (Cir. Ct. Dec. 17, 2025)).

After the Hearing on the Subject Motion, the Appellants continued to make several filings to "add additional evidence" to the Lower Court's record which were not properly before the Lower Court at the time of the Hearing. (Ord. at pp. 7-10, Elbadawy et al. v. D.R. Horton, Inc., C.A. No. 2024-CP-18-01459 (Cir. Ct. Dec. 17, 2025)). On May 14, 2025, the Appellants filed a Rule 59(e), *SCRCP*, Motion for Reconsideration of the Subject Order, therein making reference to several affidavits, documents and/or records which were not properly before the Lower Court at the time of the Hearing. (Mot. Reconsideration at pp. 1-159, Elbadawy et al. v. D.R. Horton, Inc., C.A. No. 2024-CP-18-01459 (Cir. Ct. May 14, 2025)). Further, the Appellants used the Motion to Reconsider to present arguments on the merits of Appellants purported adverse possession claims

and challenging the public nature or dedication of the Subject Road; none of these matters or issues being the subject of the Subject Motion. *Id.* at 2-8.

It is proper to view a Rule 59(e) motion not only as a vehicle to request the trial court “alter or amend the judgment,” but also as a vehicle to seek “reconsideration” of issues and arguments. *Elam v. S.C. DOT*, 361 S.C. 9, 21, 602 S.E.2d 772, 778-79 (2004). A motion under Rule 59(e) long has been viewed as “motion for reconsideration” despite the absence of those words from the rule. *Id.* Consequently, a party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented. See, e.g., *Elam v. S.C. DOT*, 361 S.C. 9, 21, 602 S.E.2d 772 (2004); *Lyons v. Fid. Nat’l Title Ins. Co.*, 415 S.C. 115 (2015). “An issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.” *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998).

At the direction of this Court, the Lower Court performed an extensive review of the documents, records, and evidence before it at the time of the Hearing and which were submitted by the Appellants post-Hearing. (Order, *Elbadawy et al. v. D.R. Horton, Inc.*, App. No. 2025-001299 (Ct. App. Aug. 13, 2025)). The Lower Court held, “Appellants have filed documents, records or have otherwise entered “Exhibits” with the Court of Appeals that were: (i) not introduced in support of the Appellants’ Motion for Injunction; (ii) not expressly referenced or relied upon during Appellants’ oral arguments at the January 21, 2025 Motion hearing; and (iii) not moved into evidence by the Appellants during the January 21, 2025 Motion hearing.” (Ord. at p. 10, *Elbadawy et al. v. D.R. Horton, Inc.*, C.A. No. 2024-CP-18-01459 (Cir. Ct. Dec. 17, 2025)).

On appeal, the Appellants have doubled down on their prior conduct by raising substantially similar arguments as those raised in their Motion to Reconsider and, in doing so, have

relied upon documents, records, and other submissions not timely or properly before the Lower Court prior to or during the Hearing. The documents, affidavits, and other records relied upon by the Appellants in this appeal clearly include several post-Hearing submissions as documented by the Lower Court's December 17, 2025 Order including, without limitation: (i) the purported affidavit of Amanda Wise (filed January 24, 2025); (ii) the purported affidavit of Steve Meyer (filed February 6, 2025); and (iii) Appellants' filings referred to by Appellants as "Adding More Evidence" (filed January 24, 2025, February 6, 2025, and February 14, 2025). (Ord. at pp. 7-11, Elbadawy et al. v. D.R. Horton, Inc., C.A. No. 2024-CP-18-01459 (Cir. Ct. Dec. 17, 2025)).

When comparing the records identified in the Appellants Designation of Matter to those having been identified by the Lower Court in its December 17, 2025 Order, the Appellants relied upon post-Hearing submissions and filings in support of its Motion to Reconsider and this Appeal. Because such records were not properly before the Lower Court for consideration at the Hearing, the same cannot be used or relied upon in this appeal. The Appellants failed to preserve the record for appeal and all of the Appellants' post-Hearing filings and/or submissions should be disregarded by this Court.

CONCLUSION

Appellants did not argue the elements of a temporary or preliminary injunction at the Hearing and they otherwise failed to reasonably establish: (1) they would suffer irreparable harm if the injunction is not granted; (2) they will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law. Conversely, Respondent adequately challenged the Subject Motion by presentation of cogent arguments, evidence in opposition, and competent testimony through affidavits. If the foregoing is not damning enough, the Appellants also offered no memoranda in support of the Subject Motion and made countless post-Hearing filings or

submissions to the Lower Court without leave and/or without requesting the same be considered in the Lower Court's ruling on the Subject Motion. For all of these reasons the injunctive relief sought through the Subject Motion was properly denied by the Lower Court. This Court should affirm the Lower Court's May 6, 2025 and June 23, 2025 Orders denying the Subject Motion.

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