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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas
Courtney Clyburn Pope, Circuit Court Judge

Appellate Case No. 2026-000846

Luanne Morgan, Appellant,

v.

Bunkers Associates, a South Carolina General Partnership, The Bunkers Horizontal Property Regime, and The Bunkers Association, Inc., d/b/a Bunkers Homeowners Association, Respondents.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE

On April 21, 2025 Luanne Morgan brought this action alleging several causes of action against Bunkers Associates, a South Carolina General Partnership, The Bunkers Horizontal Property Regime and The Bunkers Association, Inc., d/b/a Bunkers Homeowners Association. As described more fully below she seeks specific affirmative relief and damages in this case.

On October 10, 2025 the Respondents filed a motion for summary judgment as to all of Ms. Morgan's causes of action. A hearing to consider the Respondents' motion was conducted on November 12, 2025 before Circuit Court Judge Courtney Clyburn Pope. On March 26, 2026 Judge Pope issued her Order granting the Respondents' motion for summary judgment, dismissing this case in its entirety. On April 8, 2026 Ms. Morgan served her Notice of Appeal on the Respondents.

STANDARD OF REVIEW

This court applies the same standard required to be used by the circuit court to determine whether summary judgment is appropriate under Rule 56 (c), SCRCP. George v. Fabri, 345 S.C. 440 , 548 S.E.2d 868 (2001); Loflin v. BMP Development, LP, 427 S.C. 580, 832 S.E.2d

294 (Ct. App. 2019). Summary judgment is appropriate only if it is clear there is no genuine issue of material fact in a case and the moving party is entitled to judgment as a matter of law." Silvester v. Spring Valley Country Club, 344 S.C. 280, 543 S.E.2d 563 (Ct. App. 2001).

A party opposing summary judgment is required to establish a "genuine issue of material fact" and not an inference that is not reasonable or an issue of fact which is not genuine. Kitchen Planners, LLC v. Friedman, 440 S.C. 456, 892 S.E.2d 297 (2023). In determining whether a genuine issue of material fact exists the evidence, as well as all inferences which can be reasonably drawn from that evidence, must be viewed in a light most favorable to the nonmoving party. Hancock v. Mid-South Management Co., Inc., 381 S.C. 326, 673 S.E.2d 801 (2009); see also, Schmidt v. Courtney, 357 S.C. 310, 592 S.E.2d 326 (Ct.App.2003)(stating that all ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party).

Summary judgment should not be granted even when there is no dispute as to the facts, if there is a dispute as to the conclusions to be drawn therefrom. MacFarlane v. Manly, 274 S.C. 392 , 264 S.E.2d 838 (1980). Summary judgment is also not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Brockbank v. Best Capital Corp., 341 S.C. 372, 534 S.E.2d 688 (2000); Gadson v. Hembree, 364 S.C. 316, 613 S.E. 2d 533 (2005); Middleborough Horizontal Property Regime Council of Co-Owners v. Montedison, 320 S.C. 470, 465 S.E.2d 765 (Ct. App.1995).

FACTS

The relevant facts for this appeal are set forth in the Appellant's arguments outlined below.

ARGUMENTS

1. THE CIRCUIT COURT ERRED BY CONCLUDING THE RESPONDENTS DO NOT HAVE AN AFFIRMATIVE AND ONGOING DUTY UNDER THE FACTS OF THIS CASE TO REPAIR THE GENERAL COMMON ELEMENTS OF THE BUILDING WHERE MS. MORGAN'S CONDOMINIUM IS LOCATED.

Ms. Morgan is an owner of a residential condominium which is part of "The Bunkers" located in the City of Aiken. The Bunkers consists of several buildings in which separate condominium units are located. (Appellant's Complaint; Respondents' Answer). The building where Ms. Morgan's condominium includes three other condominium units. (Master Deed; HOA Bylaws).

The real property comprising The Bunkers, as well as residents living there and the Respondents, are subject to the terms and provisions of "The Bunkers Master Deed and Enabling Declaration." (the "Master Deed"). Owners of the condominiums units are members of The Bunkers Association Homeowners Association, which is governed by "The Bylaws of the Bunkers Association Homeowners Association"(the "Bylaws"). (HOA Bylaws). The owners pay regime fees to the Association, part of which is used to secure insurance to cover needed repairs to the General Common Elements of The Bunkers. (Master Deed; HOA Bylaws).

The Bunkers are also governed by the provisions of the South Carolina Horizontal Property Act, S.C. Code Ann. § 27-31-10, et seq. (1976) ("The Act"). (Master Deed; Appellant's Complaint; Respondents' Answer). The Act requires that deeds and other instruments establishing condominium regimes like The Bunker conform to certain legal requirements. S.C. Code Ann. § 27-31-100 (1976); see also <u>Queen's Grant II Horizontal Property Regime v. Greenwood Development Corporation</u>, 368 S.C. 342, 628 S.E.2d 902 (S.C. App. 2006) and <u>Roundtree Villas Association, Inc. v. 4701 King's Corporation</u>, 282 S.C. 415, 321 S.E.2d 46 (1984).

Ms. Morgan purchased her condominium in April of 2018. (Appellants' Complaint). After she moved in she observed water leaking from a ceiling in her kitchen. In late 2018 she hired a local contractor to repair the ceiling. (Dream Builders invoice dated 12/3/18). When the contractor removed the ceiling material he discovered that a structural, load-bearing interior beam covered by the ceiling had been previously removed. (Dream Builders Invoice dated 12/3/18). The contractor replaced the beam and repaired the ceiling for a total cost of $12,500.00. (Dream Builders Invoice dated 12/3/18).

Ms. Morgan, not appreciating the legal significance of the Master Deed, did not notify the Respondents of the damage in her condominium and used her homeowner's insurance to pay the contractor. She contends the work performed by the contractor has not solved the problems she has with her condominium and they persist today. (Appellant's Complaint).

The Respondents paid the sum of $6,066.40 to Ms. Morgan by check in February 2019, explaining in an electronic message to her dated February 8, 2019 that they were "reimbursing" her the sum of $4,500.00 for replacement of the "weight-bearing beam", the sum of $1,000.00 for her insurance deductible and the sum of $566.40 to "cover other incidentals." (EMAIL dated 2/8/19). Ms. Morgan did not sign any type of waiver of claims or release when she accepted these payments.

At the time they made these payments the Respondents acknowledged the prior owner removed the beam in violation of the Master Deed and planned to explore legal action in that regard. (EMAIL dated 2/8/19). They further acknowledged their responsibility to "restore, repair and rebuild" the damage in her condominium. (EMAIL dated 2/8/19). Despite these acknowledgments the Respondents have done nothing to carry them out to date, including something as basic and simple as an inspection of Ms. Morgan's condominium to determine its current condition.

In April 2021 Ms. Morgan brought a lawsuit against Delores Denero, from whom she purchased her condominium. (Appellant's Complaint). As part of that case Ms. Morgan alleged that Ms. Denero's late husband wrongfully removed the beam rendering the condition of the condominium structurally defective. (Appellant's Complaint).

Ms. Morgan settled her case with Ms. Denero for the sum of $10,000.00, which she contends is substantially less than the actual cost associated with the work which is needed to repair and correct the the structural deficiencies in the building where her condominium is located. As part of that settlement Ms. Morgan preserved her right to pursue further relief against other responsible parties. (Appellant's Complaint).

The Master Deed, as well as the Bylaws, require the Respondents to properly maintain and repair any parts of the "General Common Elements" of The Bunkers. (Master Deed; HOA Bylaws). Under the Master Deed the "General Common Elements" are defined as a building's "foundations, main walls and roofs", as well as "spaces and improvements" beneath and behind finished walls. (Master Deed, Section III, pp. 2-4); see also, S.C. Code Ann. § 27-31-20 (f)(2) (1976) (the "General Common Elements" of a property are defined as a building's "foundations, main walls, roofs, halls, lobbies, stairways, moorages, walkway docks, and entrance and exit or communication ways in existence or to be constructed or installed.").

The Master Deed specifically states:

> "The Association, at its expense, *shall be responsible for the maintenance, repair and replacement of all of the General Common Elements* and Limited Common Elements (except individual unit balconies, decks, patios and chimneys) *including those portions thereof which contribute to the support of the Buildings* . . . . (emphasis added). (Master Deed, P. 15, Section XVIII).

There is no dispute that the "weight-bearing beam" identified by the Respondents in the electronic message dated February 8, 2019, and removed by the prior owner of Ms. Morgan's condominium, is structural in nature and "contributes to the support" of the building where her home is located. As outlined above the Master Deed prohibits residents of The Bunkers from making alterations or repairs to the General Common Elements in their condominium units without the Respondents' approval. (Master Deed).

S.C. Code Ann. § 27-31-240 (1976) requires the Respondents to "insure the property against risks" in the event repairs are needed to the General Common Elements. The Master Deed includes this requirement. (Master Deed, P. 16, Section XX). The Act defines "the property" within a condominium regime to include "(2) the building, all improvements, and structures on the land, in existence or to be constructed". S.C. Code Ann. § 27-31-20(k)(2) (1976).

Section 27-31-250 of the Act then provides:

> (A) *A portion of the property for which insurance is required pursuant to Section 27-31-240 and which is damaged or destroyed must be repaired or replaced promptly by the council of co-owners unless*:
>
> (1) repair or replacement is illegal under a state statute or local health ordinance; or (2) eighty percent of the co-owners, including the owner of an apartment which is not to be rebuilt, vote not to rebuild; except that the property bylaws may expressly require a percentage greater, but not less than, eighty percent of the co-owners. (B) The cost of repair or replacement in excess of insurance proceeds and reserve must be considered a common expense. (C) If the entire property is not repaired or replaced, the insurance proceeds: (1) attributable to the damaged common elements must be used to restore the damaged area to a condition compatible with the remainder of the property; (2) attributable to apartments and limited common elements that are not rebuilt must be distributed to the owners of those apartments and to the owners of those apartments to which limited common elements were allocated, or to the lienholders, as their interests may appear; (3) remaining must be distributed to all of the co-owners or lienholders, as their interests may appear, in proportion to the percentage as described in Section 27-31-60. (D) If the co-owners vote not to rebuild an apartment, that apartment's allocated interest must be

> reallocated automatically upon the vote and the council of co-owners promptly shall prepare, execute, and record an amendment to the master deed reflecting the reallocations.(emphasis added).[1]

Finally, § 27-31-160 of the Act requires that the By-Laws of the Bunkers Homeowners Association contain provisions which provide for "(c) care, upkeep and surveillance of *the property and its general or limited common elements and services"*. (emphasis added).

There appear to be no judicial opinions addressing the question of whether the Respondents themselves, under the facts of this case, have an affirmative and ongoing duty under the Master Deed and the Act to make needed repairs to the General Common Elements of The Bunkers; and whether this obligation exists regardless of when they are notified of a need for such repairs, and regardless of whether a resident of the regime has attempted to make the repairs. The Circuit Court decided the Respondents have no such duty.

There are sound public policy reasons for imposing such a duty. First, all owners of property within The Bunkers have a vested interest in maintaining the soundness and structural integrity of the buildings located there - in addition to maintaining the safety of the condominiums where they live, they also want to maintain the financial value of their property; all of them will have to sell or otherwise convey their property at some point in the future, and cannot do so unless it is in good condition and conforms to the requirements of the Act and the Master Deed.

Also, owners of property in The Bunkers pay regime fees to pool their resources to secure the necessary insurance coverage to pay for needed repairs to the General Common Elements, and to protect them on an ongoing basis. There appears to be no question that the Respondents maintained such insurance coverage for the benefits of the property owners.

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[1] Ms. Morgan contends that none of these exceptions apply to this case.

Ms. Morgan submits that the Respondents have such an affirmative and ongoing duty to make such repairs, and a duty to make sure the repairs are completed correctly. She further contends they may not abdicate that responsibility, regardless of when such problems are discovered or they received notice of them.

The Respondents' payment of the sum of $6,066.40 to Ms. Morgan does not relieve them of this duty or responsibility to her or other owners of property located in The Bunkers. This payment did not release them from Ms. Morgan's claim, nor did the settlement she received from Ms. Denero absolve them of their obligation under the Master Deed as well as the Act. At a minimum the Respondents, even by now, should at least inspected Ms. Morgan's condominium to determine if additional work is needed for the "repair and replacement" of a structural part of the General Common Elements, as contemplated by the provision of the Act cited above.

By way of her Second Cause of Action Ms. Morgan seeks a judgment requiring the Respondents to specifically comply with the terms of the Master Deed and the Act. Ms. Morgan submits that the Circuit Court erred by not recognizing that the Respondents have an ongoing and continuous duty in this case to comply with the Master Deed and the Act. She asks that this Court reverse the Circuit Court's decision in this regard.

2. THE CIRCUIT COURT ERRED BY RULING MS. MORGAN'S CLAIMS IN THIS CASE ARE BARRED BY A THREE-YEAR STATUTE OF LIMITATION.

The Circuit Court also ruled that all of Ms. Morgan's claims are barred by the three-year statute of limitations applicable to breach of contract cases in this State. (Order of Judge Pope dated 3/10/26). As outlined above Ms. Morgan contends that the Respondents have an ongoing and specific duty and obligation to make the needed repairs to her condominium. Each day that passes without the required and needed repairs being made constitutes another instance where the Respondents have failed to comply with the Master Deed as well as the Act. Thus, the circumstances under which her claims arise are ongoing and her claim for specific relief is not time-barred.

If this Court finds that the Respondents do not have such a continuing duty, Ms. Morgan submits that her case was timely filed. She contends that both the Master Deed and the By-Laws are sealed documents and, therefore, a twenty-year statute of limitations applies to her claims under S.C. Code Ann. §15-3-520(b) (1976). As support for this proposition Ms. Morgan points to the signatories to the Master Deed, who made no less than four references to the fact that they did so "under seal". (See "Master Deed", pp. 47-50).

The Respondents rely on this Court's decision in the case of <u>Carolina Marine Handling, Inc. v.</u> Lasch,363 S.C. 169, 609 S.E.2d 548 (S.C. App. 2005) to support their position that Master Deed and Bylaws are not sealed documents. Ms. Morgan relies on this Court's decision in <u>Lyons v. Fidelity National Title Insurance Co.</u>, 415 S.C. 115, 781 S.E.2d 126 (S.C. App. 2015) to support her position they are.

<u>Carolina Marine</u> was decided before this Court decided <u>Lyons</u>. The facts of <u>Lyons</u> are more similar to the case presently before the Court. More importantly, this Court found in both cases that the answer to the question of whether a document is "under seal" depends primarily on the intent of those who signed the document. Neither decision suggests that a trial court should resolve the issue, and rule as a matter of law, without looking at the intent of the parties to the instrument or document.

Where the line might be ultimately drawn between the facts of <u>Carolina Marine</u> and <u>Lyons</u> is unknown to the parties in this case. Regardless, the intent of the parties in this matter is a legitimate and genuine issue of material fact in this case, and not a basis to dismiss Ms. Morgan's claims as a matter of law.

Ms. Morgan, however, submits that it was error for the Circuit Court to conclude, as a matter of law, that her claims in this case are barred by a three-year statute of limitations. She, therefore, also requests that the Circuit Court's ruling in this regard be reversed.

3. THE CIRCUIT COURT ERRED BY RULING AS A MATTER OF LAW THAT MS. MORGAN IS BARRED FROM SEEKING RELIEF IN THIS CASE DUE TO PAYMENTS MADE FOR REPAIRS TO HER CONDOMINIUM.

The Circuit Court ruled that the payment Ms. Morgan received from the Respondents in February 2019, and the payment she received from Ms. Denero, served to exhaust her remedies and bar the relief she requests as part of this case. (Order of Judge Pope dated 3/10/26). Ms. Morgan respectfully submits that the Circuit Court also erred in this regard.

Without again reviewing the facts of this case as outlined above, Ms. Morgan relies on the following key points to support her position on this issue: (1) the Master Deed and the Act impose an ongoing duty on the Respondents to properly repair and maintain the General Common Elements of The Bunkers, which include the structural components of the building where Ms. Morgan's condominium and four other condominium units are located; (2) this duty exists regardless of whether a property owner has attempted to make repairs themselves; (3) this duty exists regardless of whether the property owner has received money for such repairs; and (4) the Act's requirement that the Respondents maintain insurance to make repairs and correct deficiencies to the common elements serves to protect all owners of property within The Bunkers.

In the end this particular issue become whether the Respondents have been prejudiced by the payments of money to Ms. Morgan, and her acceptance of those funds. They have not. The

Respondents have every right to ask the Court for an offset or credit for such sums as against the amount which should be paid by them or their insurance company to properly make or complete the needed repairs at issue in this case.

In addition, the Respondents had every right to pursue their own relief from Ms. Denero for the unauthorized work which was undertaken to the condominium before Ms. Morgan purchased it. For whatever reason they chose not to do so.

Summary judgment is a drastic remedy which should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues. Baughman v. American Telegraph and Telephone Co., 306 S.C. 101, 410 S.E.2d 537 (1991). In addition, and as noted above, summary judgment is also not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Brockbank, Gadson and Middleborough, supra.

Ms. Morgan submits that it was error for the Circuit Court to also conclude, as a matter of law, that the payments she received operated as a complete bar to her claims in this case. She asks also that the Circuit Court's ruling on this issue be reversed and this matter remanded to the Circuit Court for further proceedings.

CONCLUSION

For the reasons stated, this Court should reverse the Order of the Circuit Court granting summary judgment to the Respondents and remand this matter for further proceedings.

Respectfully Submitted,

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