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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY

Court of Common Pleas

Honorable Michael M. Jordan, Master in Equity

Appellate Case No. 2026-000451

Lakewood Links Property Owners Association, Inc.,

Respondent,

v.

Jason M. Josey and April W. Josey,

Appellants.

INITIAL BRIEF OF APPELLANTS

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STATEMENT OF ISSUES ON APPEAL

1. The HOA Covenants require the HOA to approve or deny an architectural request in writing within thirty days. The HOA never responded to the Joseys' request to approve their fence. Did the HOA waive the right to demand removal of the Joseys' privacy fence?
2. South Carolina law allows community associations to deny architectural review requests based solely on aesthetic considerations if such denial bears a reasonable relation to a general scheme of development. Did the Master err in ordering removal of the fence where he found no general scheme of development regarding fences within Lakewood Links?

STATEMENT OF THE CASE

This is an appeal from the Master's order requiring the Joseys to remove their wooden privacy fence dated July 8, 2025. (Order, Jul. 8, 2025.) On December 29, 2022, Lakewood Links Property Owners Association, Inc. (the "HOA") sued the Joseys seeking a permanent injunction requiring the Joseys to remove the privacy fence erected on their property. (Compl.) The HOA's Complaint alleged that the Joseys violated the Declaration of Covenants and Restrictions for Lakewood Links and Provisions for the Lakewood Links Property Owners' Association, Inc. (the "Covenants.") (Id.)

The Joseys' initial Answer was filed March 3, 2023, and asserted a general denial and affirmative equitable defenses. (Answer.) Thereafter, the Joseys sought to amend their Answer and assert counterclaims by motion dated July 18, 2024. (Mot. to Amend.) The Amended Answer asserted counterclaims for (1) a Declaratory Judgment that the HOA's rules and regulations were unenforceable because they were not recorded as required by S.C. Code § 27-30-130; (2) a Declaratory Judgment that the HOA may not prohibit wooden privacy fences without amending the Covenants; (3) a Declaratory Judgment that the HOA cannot prohibit the Joseys from installing a wooden privacy fence because no common scheme exists within the Lakewood Links community; and (4) a Declaratory Judgment that the HOA waived its right to exercise architectural review and control of the Joseys' fence because the HOA failed to approve or deny the Joseys' request within thirty days as required by the Covenants. (Am. Answer and Countercl.)

The HOA filed an Amended Summons and Complaint on September 26, 2024. (Am. Compl.) The HOA then filed its Reply to the Joseys' Amended Answer and Counterclaim on October 4, 2024. (Reply.) No order was entered approving the HOA's Amended Complaint or

the Joseys' Amended Answer and Counterclaim, but neither party objected, and the pleadings were accepted by consent.

The case was referred under Rule 53, SCRCP, to Michael M. Jordan, Master in Equity for Sumter County, by order dated May 10, 2023. (Order, May 10, 2023.) The Master held a non-jury trial on October 7-9, 2024 and, by Final Order filed July 8, 2025, found that the Joseys violated the Covenants and enjoined them to remove the privacy fence. (Order, Jul. 8, 2025.) The Master denied both parties' request for attorney's fees. (Id.) The HOA moved to alter or amend the denial of attorney's fees on July 18, 2025, and the Master denied the motion by order filed January 30, 2026. (Mot. Alter or Amend; Order Jan. 30, 2026.) The Joseys timely filed this appeal on February 23, 2026. (Not. of Appeal.)

STATEMENT OF FACTS

The Joseys live in the Lakewood Links neighborhood in Sumter County, South Carolina. (Am. Compl., ¶ 3.) The Lakewood Links community was established in 1989 when the Covenants were filed and the HOA is the community association empowered to enforce the Covenants. (Pl. Ex. 1.)

The Covenants require that HOA members seek and obtain approval from the HOA's Architectural Review Board (the "Review Board") before constructing any improvements or changing the exterior appearance of the property. (Pl. Ex. 1, Part Two, Art. I, § 2(e).) If the Review Board does not grant or deny an application within thirty (30) days of receipt of a written request for approval, the HOA and Review Board waive the right to deny the requested change. (Pl. Ex. 1, Part Two, Art. I, § 2(f).) The Covenants authorize the Review Board to establish and amend objective standards and guidelines. (Pl. Ex. 1, Part Two, Art. I, § 1.)

For many years, the HOA allowed a variety of fence styles, colors, and materials, including chain-link, iron, wooden, white picket, vinyl and brick. (Order, July 8, 2025, p. 8, ¶ 36.) Significantly, the Review Board Chairman's own property features a black wooden fence and a chain-link fence. (Trial Tr. Vol II, p. 41, ll. 8-20.) Sometime around 2009, the HOA decided to prohibit wooden privacy fences, despite their existence throughout the community. (Def. Ex. 3.) In March 2020, the HOA attempted to officially adopt the total prohibition on wooden fences by recording a document entitled “Conditions & Restrictions (C&Rs).” (Def. Ex. 1.) The C&Rs were recorded in response to adoption of S.C. Code § 27-30-130, but were recorded after the January 10, 2019 deadline established therein. Additionally, the HOA’s membership did not approve the C&Rs as required by the Covenants. (Trial Tr. Vol. I, p. 303, ll. 6-12.). As a result, at trial, the HOA conceded that the C&Rs were not enforceable. (Id.)

During the summer of 2021, the Joseys erected a wooden privacy fence on their property. (Am. Compl., ¶ 6.) The Joseys did not request architectural review before erecting the fence because they viewed the fence as merely an extension of the existing eight-foot fence adjacent to their property. (Def. Ex. 4.) On May 31, 2022, the HOA’s counsel wrote the Joseys, demanding that they remove the fence and suggested that the Joseys should “request permission to build a compliant fence that meets the requirements and specifications as outlined by the [C&Rs].” (Plf. Ex. 16.)

On June 13, 2022, in response, the Joseys applied in writing to the HOA and Review Board for approval of the fence, highlighting the unenforceability of the C&Rs and writing “we are asking the Association to retroactively approve our existing fence . . .” (Def. Ex. 4.) Neither the HOA nor the Review Board ever approved or denied the fence request in writing, and instead sued the Joseys. (Trial Tr. Vol. II, p. 31, ll. 9-12.) For the first time since its May 2022 letter, the HOA

alleged that it had denied the Joseys' fence based on aesthetic considerations as opposed to the total ban found in the C&Rs. (Compl.)

Despite all of the evidence proving otherwise, the Master nonetheless found that "the defendants did not make application regarding fencing" (Order, July 8, 2025, p. 13, ¶ 53), and on that basis that "the ARB did not waive any right to review as provided under the covenants" (Id., p. 12, ¶ 48.) The Master further found that, even though no common scheme of development existed within Lakewood Links as to fences, the HOA's denial of the Joseys' wooden fence was not arbitrary or capricious. (Id., p. 12, ¶ 41; p. 13, ¶ 54.). This appeal followed.

STANDARD OF REVIEW

"An action to enforce restrictive covenants by injunction is an action in equity." Buffington v. T.O.E. Enter., 383 S.C. 388, 391, 680 S.E.2d 289, 290 (2009). "In an action in equity, tried with reference to a master, [the appellate court] reviews the evidence and determines the facts according to its own view of the preponderance of the evidence, though it is not required to disregard the findings of the master." Fox v. Moultrie, 379 S.C. 609, 613, 666 S.E.2d 915, 917 (2008).

ARGUMENT

I. HOA Waived the Right to Force the Joseys to Remove the Privacy Fence by Failing to Deny the Joseys' Request Within Thirty Days.

When a property owner submits a request for architectural approval, the Covenants require the HOA to approve or deny the request within thirty days or waive the right to require approval for that improvement. (Pl. Ex. 1, Part Two, Art. I, § 2(f).) The HOA did not respond to the Joseys' application, thereby waiving the right to object.

“The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intent as determined by the contract language.” Anderson v. Buonforte, 365 S.C. 482, 495, 617 S.E.2d 750, 757 (Ct. App. 2005)(quoting Schulmeyer v. State Farm Fire Cas. Co., 353 S.C. 491, 579 S.E.2d 132, 134 (2003)). “When the language of a contract is clear, explicit, and unambiguous, the language of the contract alone determines the contract's force and effect . . .” Moser v. Gosnell, 334 S.C. 425, 430, 513 S.E.2d 123, 125 (Ct. App. 1999). “Where language creating restrictions on the use of property [are] clear and unambiguous, the restrictions will be enforced according to their plain and obvious meaning.” Hanold v. Watson’s Orchard Prop. Owners Ass’n, Inc., 412 S.C. 387, 396-397, 772 S.E.2d 528, 533 (Ct. App. 2015).

Section 2 of Article I in Part Two of the Covenants provides:

(f) Submission, Approval and Refusal of Architecture, Siting, Landscaping and Other Building Plans. Two copies of all plans and related data shall be in the records of the Review Board. The other copy shall be returned to the Property Owner marked “approved” or “disapproved.” The Review Board shall establish a fee Sufficient to cover the expense of reviewing plans and related data at the time they are submitted for review and to compensate any consulting architects, landscape architects, urban designers, or attorney's retainer in accordance with subparagraph (c)(3) above. The Fee initially established by these Covenants shall be \$50.00 for each submission. The Review Board shall have the right to increase this amount not more than once in any subsequent twelve (12) month period. Approvals shall be dated and shall not be effective for construction commenced more than six months after such approval. Disapproved plans and related data shall be accompanied by a reasonable statement of items found unacceptable. ***In the event approval of such plans is neither granted nor denied within thirty (30) days following receipt of Review Board of written request for approval, the provisions of this Section shall be thereby waived.*** Refusal of approval of plans, location or specification may be based by Review Board upon any ground which is consistent with the objectives of these covenants. including purely aesthetic considerations, so long as such ground is not arbitrary or capricious.

(emphasis added.)

The Joseys wrote to the HOA on June 13, 2022, requesting that the Review Board approve their wooden privacy fence or, in the alternative, approve a proposed fence alteration. (Def. Ex. 4). Section 2(f) required the HOA to consider the Joseys' request and, if the request was denied, return the copy of the plans to the Property Owner marked "disapproved," "accompanied by a reasonable statement of items found unacceptable." The Review Board made no such response. Rory Hair, chairman of the Review Board, testified that no response to the fence request was ever issued. (Trial Tr. Vol. II, p. 31, ll. 9-12; p. 36, ll. 2-9), despite the HOA's Chairman testifying that the HOA had an obligation to respond to the Joseys' request for retroactive approval. (Trial Tr. Vol. II, p. 103, ll. 18-21.)

This case closely tracks Anderson, 365 S.C. at 495-97, 617 S.E.2d at 757-58 (holding property owners' association waived the right to exercise architectural control by failing to approve or disapprove plans within thirty days). There, as here, a property owner sought retroactive approval for an improvement governed by restrictive covenants containing a thirty-day review provision. There, as here, the party seeking enforcement later pursued injunctive relief requiring removal or alteration of the improvement. And there, as here, the designated reviewing authority failed to approve or disapprove the owner's submission within the contractual deadline. The South Carolina Court of Appeals held that the covenant's thirty-day provision controlled. Because the reviewing authority did not approve or disapprove the owners' plans within thirty days, the court held the owners were free to proceed with the proposed garage and addition and reversed the order requiring their removal or alteration. Id. The court reached that conclusion notwithstanding the enforcement plaintiffs' request for an injunction and their contention that the improvements contravened the subdivision's restrictions.

The HOA may argue that the June 13 letter came too late to matter: the fence was already standing, and the letter asked for retroactive approval. Neither fact changes the analysis. Section 2(f) conditions waiver on the failure to grant or deny ‘within thirty (30) days following receipt’ of a written request. It does not condition waiver on the sequence of construction and submission, and it does not excuse a request the Review Board would rather not answer. Additionally, the HOA’s own witnesses testified that the Review Board would consider a request retroactively and provide a response within thirty days. (Tr. Trans. Vol. II, p. 47, ll. 22-25; p. 48, ll. 1-6.)

The same result follows here. The Covenants expressly require the Review Board to grant or deny a written request within thirty days and expressly provide that, if it does not do so, the HOA and Review Board waive the right to deny the requested change. (Pl. Ex. 1, Part Two, Art. I, § 2(f).) The Joseys submitted a written request on June 13, 2022, asking the Review Board to approve the existing wooden privacy fence or, alternatively, the proposed alteration. (Def. Ex. 4.) The HOA never provided the required written response. (Trial Tr. Vol. I, p. 453, ll. 20-25; Vol. II, p. 31, ll. 9-12; p. 36, ll. 2-9.)

In attempting to overcome the waiver issue, Mr. Hair testified that he did not consider the Joseys’ June 13, 2022, letter to be a request under Section 2(f) because it was not made on the official ARB form. (Trial Tr. Vol. II, p. 31, ll. 4-14.) Based on this testimony, the Master found that the June 13, 2022, letter “did not follow the rules and procedures set out in the 1988 Covenants” and therefore did not trigger the Review Board’s obligation to respond within thirty days. (Order, July 8, 2025, p. 7, ¶ 28.)

The Covenants prescribe no form that owners must use to request approval. Section 2(f) requires none, and the sole procedural provision the Master relied on, § 2(c)(2), supplies none: it

provides only that the Review Board may operate in accordance with its own rules of procedure, which shall be filed with the Association. (Pl. Ex. 1, Part Two, Art. I, § 2(c)(2)). The ARB request form appears only in the C&Rs, which the HOA conceded are not enforceable. No other rules of procedure were offered into evidence.

Nor could unrecorded rules govern the Joseys' request. A homeowners association's rules and regulations must be recorded in the county where the property is located to be, and to remain, enforceable. S.C. Code Ann. § 27-30-130(A)(1), (B)(2). The record is devoid of any recorded Review Board rules. Whatever internal procedures the Review Board followed, it could not unilaterally add a submission requirement to § 2(f) or relieve itself of the obligation to answer a written request within thirty days.

This Court should not rewrite the Covenants to preserve a right of architectural control the HOA and Review Board relinquished by failing to act within the time the Covenants prescribe or by imposing an obligation to use a specific form to constitute a request for architectural approval. Under Anderson, the HOA's later effort to compel removal cannot cure its failure to timely disapprove the Joseys' written request. This Court should reverse the injunction and deny the HOA's request for removal of the fence.

II. The Master Erred in Ordering Removal of the Fence After Finding That No Common Design Scheme for Fences Exists in Lakewood Links

The Covenants empower the Review Board to disapprove architectural requests based solely on aesthetic grounds, so long as such grounds are not arbitrary and capricious. (Pl. Ex. 1, Part Two, Art. I, § 2(f).) Our case law is clear that such a "disapproval *must* bear a reasonable relation to other buildings or the subdivision's general plan of development." Palmetto Dunes

Resort, Div. of Greenwood Dev. Corp. v. Brown, 287 S.C. 1, 8-9, 336 S.E.2d 15, 19-20 (Ct. App. 1985)(emphasis added). The Master correctly found that no common scheme of development exists as to fences in Lakewood Links. (Order, July 8, 2025, p. 8, ¶ 36; p. 10, ¶ 41; p. 13, ¶ 54.) Therefore, the HOA’s objection to the Joseys’ fence is arbitrary and capricious and should not be allowed to stand.

The Master found that existing fences within Lakewood Links are not uniform in material, height, construction, color, or appearance, because the subdivision contains wooden stockade, privacy, picket, brick, chain-link, solid, open, black, green, brown, and white fences. (Order, July 8, 2025, p. 8, ¶ 36.) In that same finding, the Master recorded the admission that there had “always been wooden fences (17 per one list) and privacy fences in the subdivision.” (Id.). Most significantly, the Master expressly found that “a common design scheme does not exist in terms of fences existing in the subdivision.” (Id., pp. 16-17, ¶ 65.). Nonetheless, he granted injunctive relief, ruling: “I do not see that the absence of a consistent design scheme prevents a review by the [Review Board] as contemplated by the covenants.” (Order, July 8, 2025, pp. 16-17, ¶ 65).

That conclusion is against our state’s precedent. Palmetto Dunes and Sea Pines Plantation Co. v. Wells, 294 S.C. 266, 363 S.E.2d 891 (1987), allow for denial based on purely aesthetic grounds only where that ground bears a reasonable relation to the subdivision’s general plan of development. Once the Master found that no common design scheme for fences exists, the aesthetic ground he upheld had nothing to bear a reasonable relation to. The absence of a design scheme does not disable review; it disables this refusal. Generalized aesthetic preferences like those the Master cited cannot establish the required nexus to a general scheme and the Master’s own findings show why. He found that wooden and privacy fences had long existed in Lakewood

Links, that fence requests were considered case by case with no automatic turn down of wooden fences, and that the Review Board's considerations "typically included aesthetics, open views for an open community, fence maintenance and special circumstances." (Order, July 8, 2025, p. 8, ¶¶ 36-37). However, a set of factors the Review Board "typically" weighed, case by case, is not a general plan of development; it is the subjective preference Palmetto Dunes and Sea Pines require be tethered to the objective character of the subdivision. Aesthetics and open views cannot supply that nexus where the Master also found that no common design scheme for fences exists and that wooden and privacy fences have always been present. (Order, July 8, 2025, p. 8, ¶ 36; pp. 16-17, ¶ 65.)

The HOA's authority to undertake a case-by-case review does not allow it to reach a result that is arbitrary under the Covenants. Once the Master found no uniform fence scheme, no common design scheme for fences, no categorical restriction on wooden fences, and no affected golf-course or water view, the HOA could not justify removal by invoking aesthetic concerns in the abstract. Nor can the HOA treat the Joseys' wooden fence as unsightly while other wooden fences, including that of its own Review Board chairman, remain standing. Such disparate treatment not only undermines the credibility of the HOA's aesthetic standards but also raises questions about the fairness of its enforcement actions. By allowing other wooden fences to exist without objection, the HOA effectively negates its argument against the Joseys. This inconsistency signifies a failure to adhere to the principles of equal treatment under the Covenants and highlights the arbitrary nature of the HOA's review process. Therefore, the court must recognize this imbalance and ensure that the Joseys are not unfairly penalized for maintaining a fence that is, in essence, no different from those in the community. Therefore, this Court should reverse the injunction requiring removal of the Joseys' fence and deny the HOA's request for injunctive relief.

CONCLUSION

The HOA asks this Court to enforce a deadline it ignored and a design scheme the Master found never existed. The Covenants set both the clock and the consequence: answer a written request within thirty days, or lose the right to say no. The Joseys wrote. The Review Board did not answer. The right to refuse expired by the Covenants' own terms, and it cannot be revived by a submission form that appears nowhere in § 2(f) and nowhere in any recorded rule. This Court should not rewrite the Covenants to restore an architectural control the HOA allowed to lapse.

Nor may the HOA condemn this fence on taste alone. The HOA tried to enforce a total ban on wooden fences that was recorded late and without the requisite authority. After realizing the C&Rs were unenforceable, they attempted to fall back on a "general aesthetics" argument. However, a refusal resting on purely aesthetic grounds is permissible only where that ground bears a reasonable relation to a general scheme of development. The Master found there is none. An aesthetic objection with nothing to relate to is arbitrary and capricious, and the HOA cannot declare the Joseys' fence unsightly while the Review Board Chairman's own wooden fence stands undisturbed.

For the foregoing reasons, the Joseys respectfully request that this Court reverse the Master's order and deny the HOA's request for injunctive relief.

Respectfully submitted,

August 19, 2026

s/ Stephanie Trotter Kellahan
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