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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Diane S. Goodstein, Circuit Court Judge

Appellate Case No. 2026-001229

The Enclave at Fairview Farm
Homeowners' Association, Inc., Plaintiff,

Respondent,

v.

Susan B. Spiegel, Defendant,

Appellant.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Did the circuit court commit reversible error when it granted a temporary injunction based upon an alleged violation of restrictive covenants, where the court acknowledged the covenants contained no express language prohibiting the action at issue, and instead based its decision on the court's perceived intent of the restrictive covenants?
2. Did the circuit court commit reversible error when it granted a temporary injunction concerning an easement when the owner of the dominant estate was neither a party to the action nor served notice of the hearing?
3. Did the circuit court commit reversible error in setting bond for a temporary injunction without accepting evidence of the potential damages suffered by the party to be enjoined?

STATEMENT OF THE CASE

This appeal arises from the circuit court's grant of a temporary injunction in favor of Plaintiff, The Enclave at Fairview Farm Homeowners' Association, Inc. ("The HOA") against one of its members, Susan B. Spiegel. (Orders). In effect, the temporary injunction invalidates an easement Spiegel granted to an adjacent landowner allowing it access to the Inman-Campobello Water District water service line. (Orders).

The HOA commenced the within action on April 7, 2025, by filing a summons and complaint and a motion for injunctive relief with the Spartanburg County Court of Common Pleas. (Motion for Injunction). A hearing on the motion for injunctive relief was held on May 16, 2025. The circuit court granted Plaintiff's motion in a July 23, 2025, order, and required bond of \$1,600. (July 2025 Order). Spiegel timely filed a Rule 59(e) motion to alter or amend on August 1, 2025, which the court heard January 23, 2026. (Rule 59 motion). The circuit court denied

Spiegel's 59(e) motion and entered a written order April 30, 2026. (April 2026 order). Spiegel timely filed her notice of intent to appeal on May 28, 2026.

FACTS

Spiegel's property in northern Spartanburg County is within The HOA, one of several neighborhoods in the area comprised of large acreage estates¹. The HOA is governed by the "Amended and Restated Declaration of Covenants, Restrictions, and Easements for The Enclave at Fairview Farm," (the "Covenants"), filed on October 15, 2013, with the Spartanburg County Register of Deeds. (Covenants).

Blue Sky Associates, LLC ("Blue Sky") owns a 38-acre parcel adjacent to Spiegel. However, Blue Sky's property is not part of The HOA (or any other) and is not subject to its Covenants (or any others). Blue Sky's plan for its property includes developing a portion into an RV park, which The HOA has opposed. On January 24, 2025, Spiegel granted an easement to Blue Sky to connect to the Inman-Campobello Water District via a to-be-installed underground water line running through Spiegel's property. (Property map). The easement was recorded the same day with the Spartanburg County Register of Deeds in Book 150-B, Pages 19-22. (Easement)

The HOA subsequently learned of the easement and filed this action challenging Spiegel's ability to grant the easement and enjoin the installation of the underground water line. The HOA's request for injunctive relief contends: "Defendant Spiegel did not take the necessary steps to obtain approval from Plaintiff or its Board of Architectural Review prior to granting the Easement, which is violative of the 2013 Covenants," but does not identify the section requiring easements be approved (Motion for Injunction, p. 3). In addition, the HOA's request incorrectly

¹ The Covenants require each property in The HOA contain no fewer than 11 acres. (Covenants, Article II, Section F)

contends, “The mere breach [of a restrictive covenant] alone is grounds for injunctive relief,” citing *Siau v. Kassel*, 369 S.C. 631, 632 S.E.2d 888 (Ct. App. 2006) (*Overruled by Buffington v. T.O.E. Enterprises*, 383 S.C. 388, 680 S.E.2d 289 (2009) (“[T]o hold that a court must issue an injunction as a matter of law upon a finding that a restrictive covenant has been violated is erroneous”)).

Against this faulty legal backdrop, The HOA contended the Covenants contained multiple provisions supported granting a temporary injunction, all of which are accompanied by conclusory statements without evidentiary support:

- a. Article II, Section C: “All Lots are hereby restricted to residential, equestrian and agricultural farm use and no structure shall be erected, placed, altered or permitted to remain on any Lot other than one single family dwelling, and any other accessory structure customarily incidental to the residential, equestrian or agricultural farm use of such Lots.”
- b. Article II, Section D: “No structure may be erected, modified or expanded on the property, nor significant landscaping done, nor any addition or alteration to any existing building be made, until the proposed building/landscaping plans, specifications, materials, plot plan, and construction schedule have been submitted to the Board of Architectural Review. Such approval must be in writing.”
- c. Article II, Section E: “No building or other structure of any type shall be located on any Lot without prior written approval of the Board of Architectural Review, which...has the duty and the right to approve site locations for all buildings, taking into consideration large trees, buildings already in place, together with scenic, aesthetic, and environmental considerations.”

- d. Article II, Section L: “No tree on any Lot that is 12 inches in circumference or more, may be intentionally removed or destroyed except with the prior approval of the Architectural Review Board.”
- e. Article II, Section P: “No noxious or offensive or inappropriate activity shall be allowed upon any lot or property. No nuisance shall be permitted or maintained or allowed to continue upon any portion of the Property.”

In addition, the HOA cites Article III as evidence the Covenants mandate “keep[ing] the nature trails, bridle paths, and carriage lanes, free from interference by any member.” (HOA Memo in Support of Injunction). While Article III references riding trails, there is no mention of keeping the trails “free from interference by any member” as The HOA claims.

Although the circuit court was made aware that The HOA relied on overruled precedent and was advised the proper analysis required relying on express language or a clear and unmistakable implication in the Covenants to grant an injunction, the court nonetheless adopted The HOA’s position in its 2025 order. (Hearing transcript). When the court addressed Spiegel’s 59(e) motion, it acknowledged the legal error, and although it correctly cited the controlling standard, its original decision remained unchanged, as the April 2026 order concluded, “The Order for Temporary Injunctive Relief issued on July 23, 2025 shall remain in full force and effect until further order of this Court...” (Order Denying 59(e) motion).

STANDARD OF REVIEW

The Supreme Court has noted “an action to enforce restrictive covenants by injunction is an action in equity. On appeal from an equitable action, an appellate court may find facts in accordance with its own view of the evidence. While this standard permits a broad scope of review, an appellate court will not disregard the findings of the trial court, which saw and heard

the witnesses and was in a better position to evaluate their credibility.” *Buffington v. T.O.E. Enterprises*, 383 S.C. 388, 680 S.E.2d 289 (2009) (Internal citations omitted).

An injunction is a drastic remedy intended to prevent irreparable harm. *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004).

ARGUMENT

I. The Trial Court Improperly Expanded the Covenants Beyond the Express Terms and Plain and Unmistakable Implication

“A plaintiff’s entitlement to an injunction requires...showing an injunction must be reasonably necessary to protect the legal rights of the plaintiff pending in the litigation.” *Transcontinental Gas Pipe Line Corp. v. Porter*, 252 S.C. 478, 480-81, 167 S.E.2d 313, 315 (1969). Therefore, it is not proper to grant an injunction if there is a question about the existence of the legal right the plaintiff claims to hold. *See FOC Lawshe Limited Partnership v. International Paper Company*, 352 S.C. 408, 574 S.E.2d 228 (Ct. App. 2002) (affirming the denial of an injunction because necessary issue of control had not been determined) (*citing County of Richland v. Simpkins*, 348 S.C. 664, 670, 560 S.E.2d 902, 905 (Ct. App. 2002) (finding a business could not be enjoined without having first been adjudicated of an ordinance violation)).

South Carolina favors the free use of property; where the language of a restrictive covenant is capable of two or more interpretations, the construction that least restricts the property will be adopted. *Davey v. Artistic Builders, Inc.*, 263 S.C. 431, 211 S.E.2d 235 (1975). A restriction on the use of property must be created “in express terms or by plain and unmistakable implication, and all such restrictions are to be strictly construed, with all doubts resolved in favor of the free use of property.” *Buffington v. T.O.E. Enterprises*, 383 S.C. 388, 680 S.E.2d 289 (2009). Consistent with these rules, before granting an injunction, a court must find a restriction

stated “in express terms or by plain and unmistakable implication” was violated. *See Buffington v. T.O.E. Enterprises*, 383 S.C. 388, 680 S.E.2d 289 (2009). Moreover, because restrictive covenants must be strictly construed, courts cannot expand the restrictions beyond those expressly stated or “plainly and unmistakably” implied. *Taylor v. Lindsey*, 332 S.C. 1, 498 S.E.2d 862 (1998). Yet that is precisely what the circuit court did here.

a. The Covenants Do Not Prohibit Easements or Require Approval of Easements

In its order granting the injunction, the circuit court acknowledges the Covenants do not “expressly articulate” a prohibition against Spiegel’s easement to Blue Sky. It nevertheless excuses that omission by reasoning, “it is impractical for the drafters of the covenants and restrictions to anticipate every scenario” and concluding Spiegel’s “use of the easement falls outside the permitted uses articulated in Article II, Section C of the 2013 Covenants.”

The court’s ruling ignores Supreme Court precedent directly on point. *Taylor* involved a dispute over a property owner’s ability to place mobile homes on the lots she owned, where the neighborhood deeds contained a restriction stating, “No residence to cost less than \$10,000.00 shall be erected on said lots.” *Taylor*, 332 S.C. 1. The Supreme Court found the restriction did not prohibit mobile homes, declaring courts:

[M]ay not limit a restriction in a deed, nor, on the other hand, will a restriction be enlarged or extended beyond the clear meaning of its terms even to accomplish what it may be thought the parties would have desired had a situation which later developed been foreseen by them at the time when the restriction was written.

Taylor v. Lindsey, 332 S.C. 1, 498 S.E.2d 862 (1998) (quoting *Forest Land Co. v. Black*, 216 S.C. 255, 57 S.E.2d 420, 424 (1950)).

Several years later, the Supreme Court reiterated this rule when it rejected an effort by the South Carolina Department of Natural Resources to block the Town of McClellanville from requiring users of a boat ramp purchase a permits to use the ramp, in order to raise money for the

maintenance of the ramp. *SCDNR v. Town of McClellanville*, 345 S.C. 617, 550 S.E.2d 299 (2001). Despite DNR's insistence the permits were prohibited by deed language requiring "the parking area and boat launching ramp shall remain accessible to and remain available for use by the public," the Supreme Court disagreed, refusing "to read into a deed [DNR] drafted restrictions not 'created in express terms or by plain and unmistakable implication.' We instead resolve all doubts 'in favor of the free use of property.'" *Id.* (quoting *Taylor*, 332 S.C. at 5, 498 S.E.2d at 864). The Supreme Court went further, stating, "nothing in the plain language of the deed prohibits the town from requiring a permit or charging a fee to use the facilities...DNR does not, and cannot, argue the parking area and ramp are no longer accessible and available for use by the public." *McClellanville*, 345 S.C. 617, 550 S.E.2d 299.

Here, however, the circuit court deemed it "impractical for the drafters...to anticipate every possible scenario." Consequently, it decided Spiegel's easement to Blue Sky was "a use that the drafters of the 2013 Covenants were attempting to restrict," reflecting the same expansive construction the Supreme Court has deemed improper. "If the grantor had wanted to restrict mobile homes, he could have done so." *Taylor* at 3-4. Likewise, if the HOA wanted to require approval of easements, it could have said so.

Contrary to the circuit court's decision, the Covenants neither address a property owner's ability to grant an easement nor the HOA's authority to review, approve, or restrict easements. Of the eight times the word "easement" appears in the Covenants, half are found in a document title or heading, three are in reference to horse trails (Article I, paragraph A.2.; Article III, paragraph A; Article III, paragraph D), and the last in reference to a drainage easement (Article III, paragraph G). Further, and contrary to court's initial order, the Covenants do not require property owners to submit easements to the Board of Architectural Review for approval.

Correspondingly, the Board of Architectural Review, whose role is confined to “ensur[ing] appropriate improvement of the various lots and recreational facilities with the Development,” lacks any authority to review easements. (Article I, Paragraph A.1.). Although the Covenants require Board of Architectural Review approval of construction and landscaping plans, easements do not fall within either category by express language or plain and unmistakable implication. Therefore, it was error for the circuit court to interpret the Covenants as imposing that requirement. “A corporation may exercise only those powers which are granted to it...in determining a corporation’s powers, its charter is to be construed strictly.” *Lovering v. Seabrook Island Property Owners Association*, 289 S.C. 77, 344 S.E.2d 862 (Ct. App. 1986) (*aff’d as modified*, 291 S.C 201, 352 S.E.2d 707 (1987)).

Evidence presented to the court established on two prior occasions, the HOA did not require Spiegel to seek approval of a water line easement, further undermining the HOA’s position and weakening any basis for the court’s ruling. On May 29, 2024, roughly eight months before Spiegel granted the easement to Blue Sky, she granted a water line easement to another neighbor, T. Craig Hilton (Hilton Easement). Nearly three years before granting the easement to Blue Sky, Spiegel granted a “Right to Control Utility Easements” on her property to Russ Rock, granting him “the exclusive right to control the granting of easements and access for utilities on, under, and above” Spiegel’s property (Rock Easement). Neither easement was challenged, and the HOA presented no evidence it required easements be approved at any time prior to seeking this injunction against Spiegel. Simply put, the HOA’s inaction on earlier easements demonstrates its duplicitous assertions in this matter.

Finally, by relying on overruled precedent, The HOA’s tenuous presentation of various provisions in the Covenants demonstrates the complete absence of clear and unmistakable

language prohibiting Spiegel's actions. Whereas the analysis in *Taylor* and *McClellanville* center on a specific provision in each document, The HOA proposed a smorgasbord of possibilities, inviting the circuit court to find *something* to support granting the injunction. As evidenced by the discussion above, however, courts in South Carolina cannot just write in a restriction that is not there. Ultimately, The HOA's arguments reveal a tacit acknowledgement that the Covenants do not support granting an injunction in this case.

b. An Underground Water Line Does Not Violate the Covenants

The circuit court also erroneously determined an underground water line violates the Covenants. In fact, Article III, Section C requires utilities to be placed underground. Therefore, contrary to the circuit court's ruling, the water line to be installed complies with the Covenants.

The circuit court viewed the water line as violative because it would "service a commercial enterprise to run a business," improperly expanding the Covenants and attributing activity contemplated for Blue Sky's property, that is *not* restricted by the Covenants, to Spiegel's property, which is restricted. The HOA offered no evidence that Spiegel plans to conduct any activity on her property or that allowing an underground water line to be installed across her property constitutes activity under the Covenants, and the circuit court offered no explanation for reaching that conclusion. Although Spiegel asked the circuit court to identify, in its order, the commercial activity on Spiegel's property, the court did not do so.

Furthermore, the circuit court's interpretation of the "restricted to..." language impermissibly expands the Covenants. The circuit court determined the restriction "to residential, equestrian and agricultural farm use" excludes *any* other use of the property, including commercial use. However, equestrian and agricultural uses can also be commercial in nature; a property owner could offer riding lessons or sell crops, for example. By finding the Covenants

prohibit commercial use in the absence of an express provision, the Court improperly expanded the restrictions. Again, if the HOA intended to prohibit commercial activity, it could have expressly said so.

Based on the foregoing, the circuit court erroneously determined the HOA has a likelihood of success on the merits by reading restrictions into the Covenants that simply do not exist. Where there is a question about the existence of the legal right claimed to be held by the plaintiff, an injunction is not proper. *See FOC Lawshe Limited Partnership v. International Paper Company*, 352 S.C. 408, 574 S.E.2d 228 (Ct. App. 2002) (affirming the denial of an injunction because necessary issue of control had not been determined) (*citing County of Richland v. Simpkins*, 348 S.C. 664, 670, 560 S.E.2d 902, 905 (Ct. App. 2002) (Business could not be enjoined without having first been adjudicated of an ordinance violation)). Neither the July 2025 order nor the April 2026 order is premised upon a restriction created by express language or “by plain and unmistakable implication.” Instead, in contravention of the Supreme Court’s holdings in *Taylor* and *McClellanville*, the circuit court liberally interpreted the Covenants, resulting in an expansive reading that far exceeds the actual content of the Covenants. Accordingly, the circuit court’s orders should be reversed.

II. The Injunction Restricts Property Owners Without Providing Mandatory Notice

Entering the temporary injunction changes little on Spiegel’s property. The installation of the water line is the only time in which Spiegel’s property will be discernibly impacted by the easement. By contrast, the injunction prevents Blue Sky from freely using its property in a way Blue Sky desires. Blue Sky’s parcel, which is not subject to these (or any other) Covenants, is impacted significantly by this injunction, because the injunction prevents Blue Sky from connecting to the local water district via the easement.

Despite having an interest in the easement at issue and clearly subject to adverse effects by an injunction, Blue Sky was not named as a party to this action and the circuit court committed reversible error refusing to require the HOA provide notice to Blue Sky. In its refusal, the court stated, “This Court’s ruling has no effect on Blue Sky or how they intend to conduct their business, it merely deals with the 2013 Covenants and the restriction of lots within The Enclave.” As should be apparent, this conclusion is entirely contradicted by the facts.

The HOA clearly wanted to avoid including Blue Sky as a party, but it does not allow them to avoid the mandatory language of Rule 65(a) concerning notice. A failure to require full compliance with the mandatory provisions of Rule 65 requires reversal of the circuit court order. *See Spartanburg Buddhist Ctr of S.C. v. Ork*, 417 S.C. 601, 790 S.E.2d 430 (Ct. App. 2016) (a temporary injunction issued without notice violated the mandatory notice provision of Rule 65, SCRCPP).

Furthermore, Blue Sky is a necessary party under Rule 19, SCRCPP, which mandates joining any person who “claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.” As the easement holder, Blue Sky plainly has an interest relating to the subject of this matter. Further, Blue Sky is affected by the decisions in this case, as the rulings impact its ability to utilize the easement it acquired from Spiegel.

III. The Circuit Court Set an Insufficient Bond

Rule 65(c), SCRCPP, requires a party seeking to restrain or enjoin another post a bond “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.” At the initial hearing, the issue of bond was not addressed. The court’s order granting the injunction imposed a bond of \$1,600.00, reflecting the amount Spiegel received in exchange for granting the easement. Spiegel challenged the amount of the bond in her Rule 59(e) motion and sought to present evidence of her damages. However, the circuit court did not permit her to do so, reasoning the bond amount equaled “the benefit of the bargain” between Spiegel and Blue Sky. This nominal bond, not reflective of the full potential damages sustained by Spiegel, does not comply with the plain language of Rule 65(c), when “our appellate courts have interpreted Rule 65(c) strictly.” *Spartanburg Buddhist Ctr of S.C. v. Ork*, 417 S.C. 601, 790 S.E.2d 430 (Ct. App. 2016) (citing *Atwood Agency v. Black*, 374 S.C. 68, 646 S.E.2d 882 (2007)).

“[R]equiring only a nominal security bond does not satisfy Rule 65(c) because it erroneously assumes the injunction is proper instead of providing an amount sufficient to protect [the enjoined party] in the event the injunction is ultimately deemed improper.” *Atwood Agency*, 374 S.C. 68. Limiting the bond to merely the cost of the easement ignores Spiegel has incurred attorneys’ fees and other expenses defending against this matter and is in no way reflective of her damages.

CONCLUSION

The circuit court’s decision to grant an injunction was, in the first instance, predicated upon overruled precedent and an incorrect analysis. When given the opportunity to correct its error, the circuit court merely cited the proper law, but gave it little more than lip service. The circuit court also committed reversible error by refusing to require The HOA give notice to Blue Sky, an adverse party to the injunction and a necessary party to the dispute. In addition, the circuit court committed reversible error in requiring only a nominal bond. Therefore, this court

should find the requirements for a temporary injunction have not been met and reverse the court's decision.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that the within initial brief of Appellant and Designation of Matter comply with Rule 267, SCACR.

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CERTIFICATE OF SERVICE

The undersigned certifies that on September 2, 2026, he served Appellant's Initial Brief, Designation of Matter, and Certificate of Compliance on counsel for Respondent via electronic mail to the email address on file with the South Carolina Attorney Information System (AIS).

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