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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
The Honorable Marvin H. Dukes, III

Case No. 2026-000707

Turner's Marina, LLC — Respondent/Appellant,

v.

R.V. Resort and Yacht Club Owners' Association, Inc., — Appellant/Respondent.

INITIAL BRIEF OF APPELLANT/RESPONDENT
R.V. RESORT AND YACHT CLUB OWNERS' ASSOCIATION, INC.

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STATEMENT OF ISSUES ON APPEAL

1. Did the Trial Court err in failing to apply the doctrines of Collateral Estoppel and *res judicata* to the final judgments in *RV Resort and Yacht Club Owners Assn., Inc. v. Billybob's Marina, Inc.*, C.A. No. 2000-CP-07-1507 ("BillyBob 1"), and *Billybob's Marina, Inc. v. Blakeslee*, C.A. No. 2006-CP-07-1477 ("BillyBob 2"), as those decisions bind Turner's Marina, LLC, as the assignee of BillyBob's Declarant rights, and the issues have already been litigated and decided by a previous court?

2. Did the Trial Court err in finding an Owner's recreational vehicle ("RV") cannot be left upon a Lot for more than ten (10) days without being used for regular overnight accommodations ("10-Day Rule")?

3. Did the Trial Court err in finding an Owner's RV must be removed from his Lot for at least forty-eight (48) consecutive hours at least once every one-hundred-eighty (180) days ("48-Hour Rule")?

4. Did the Trial Court err in finding that an Owner cannot store his RV on his Lot ("No Storage Rule")?

5. Did the Trial Court err in finding that an Owner cannot permanently reside in his RV on his Lot ("No Residency Rule")?

6. Did the Trial Court err in finding Turner's Marina's current rental policy of an Owner reserving his Lot up to 48 hours prior to his usage can be unilaterally changed by Turner's Marina?

7. Did the Trial Court err in denying the Association's Third Counterclaim for breach of fiduciary duty, after finding both that Turner's Marina owes the Lot Owners a fiduciary duty in the handling of rental monies and that Turner's Marina retained cancellation fees belonging in part to the Owners?

STATEMENT OF THE CASE

Turner's Marina LLC ("Turner's Marina") on May 1, 2020 filed its Summons and Complaint against the R. V. Resort and Yacht Club Owners' Association, Inc. ("Association") asserting two (2) causes of action. First, Turner's Marina sought a Declaratory Judgment under S.C. Code Ann. § 15-53-10, et seq., seeking a judicial determination of the following six (6) issues: (1) Turner's Marina is the valid owner of the Developer's "Declarant Rights" under the Covenants; (2) Turner's

Marina holds the existing right of first refusal under the Covenants; (3) Turner's Marina is legally entitled to enforce the Covenants; (4) the Association is prohibited from conducting its business in violation of the Covenants and must enforce the Covenants uniformly and consistently; (5) that travel trailers, known as "5th Wheels," are in fact legally "modern travel trailers" subject to the size requirements of § 8.1 of the Covenants; and (6) the Association must enforce the requirements of Beaufort County Code of Ordinances §78-68(c) requiring all travel trailers to be on-site less than 180 days, and be fully licensed and ready for highway use at all times. Turner's Marina's second cause of action sought monetary damages and attorney fees and costs resulting from the Association's breach of the Covenants and an injunction requiring the Association to enforce and abide by the Covenants (R. p. ___).

The Association timely filed an Answer and Counterclaim on June 4, 2020, asserting a general denial, that Turner's Marina had not obtained the required approval under the Covenants to file the litigation, and seeking damages and recovery of attorney fees and costs. (R. p. __).

The parties thereafter amended their pleadings on various occasions. At the time of the non-jury trial, the claims of the parties were as follows:

Turner's Marina sought a Declaratory Judgment on the following issues:

1. Turner's Marina was the valid owner of the Developer's "Declarant Rights" under the Covenants;
2. Turner's Marina held the existing rights of first refusal under the Covenants;
3. Turner's Marina was legally entitled to enforce the Covenants;
4. The Association was prohibited from conducting its business in violation of the Covenants and must enforce the Covenants uniformly and consistently;
5. That travel trailers, known as "5th Wheels," are in fact legally "modern travel trailers" subject to the size requirements of § 8.1 of the Covenants;

6. The Association must enforce the requirements of Beaufort County Code of Ordinances, §78-68(c) requiring all travel trailers to be on-site less than 180 days, be fully licensed, and ready for highway use at all times;

7. The Association must adhere to Beaufort County Code of Ordinances § 4.1.190 c. 1 limiting all camping to a 30-day stay;

8. § 7 of the Covenants only obligates Turner's Marina to pay 50% of the gross lot rentals to the Lot Owners and maintain an advertising program;

9. All RVs on any Lot must always be capable of being immediately moved under the RV's own power or by a towing vehicle that must remain with the RV at all times on the Lot;

10. All RVs on any Lot must be intended for temporary stays and be readily moveable;

11. Any Rules and Regulations promulgated by the Association are subject to Turner's Marina's right to approve same as the assignee of the Developer under § 8.9 of the Covenants;

12. Turner's Marina, as the assignee of the Developer's rights under the Covenants, has the right to approve or disapprove any rule or regulation promulgated by the Association regarding either the operation, use, maintenance, management or control of the Common Property, or governing and restricting the use and maintenance of the lots; and

13. Turner's Marina, as the assignee of the Developer's rights under the Covenants, has the right to insist no Rules or Regulations adopted by the Association are in contravention of the Covenants pursuant to § 8.1 of the Covenants.

Turner's Marina also asserted a second cause of action for injunctive relief to require the Association to comply with the Covenants and further sought an award of attorney fees and costs.

The Association on March 19, 2021, filed a general denial, raised various affirmative defenses, and asserted the following seven (7) counterclaims:

1. Turner's Marina failed to obtain the required approval under the Covenants before filing suit, entitling the Association to an award of attorney's fees and costs;

2. Turner's Marina's actions in issuing no trespassing notices, and other actions, constituted an abuse of process;

3. Turner's Marina breached its fiduciary duty owed to the Association in how it managed and handled the rental program and rental monies;

4. Due to the actions of Turner's Marina in breaching its fiduciary duty and abuse of process, the Court should issue a temporary injunction against Turner's Marina;

5. Turner's Marina breached the Covenants in its operation of the rental program, refused to consent to a Covenant amendment as to the RV size limits, interfered with easements held by the Association, operated multiple businesses out of the Resort causing damage to the Association, made false and untrue statements as to the Association, asserted control over property it did not own, and other actions. Actual and punitive damages and attorney fees were sought. The Association also sought a declaratory judgment that defined the rights of Turner's Marina's boat slip customers to use certain property;

6. Damages against Turner's Marina for breach of the Covenants accompanied by fraudulent acts; and

7. Damages against Turner's Marina for violating the S.C. Unfair Trade Practices Act.

Turner's Marina timely responded to the Association's Counterclaims on April 28, 2021. (R. p. __).

On April 8, 2022, Judge Marvin H. Dukes III heard arguments on granting Turner's Marina's Motion for Partial Summary Judgment (R. p. __), filed on May 7, 2021. On June 8, 2022, Judge Dukes issued an Order on said motion, as amended by the Court's Order of November 8, 2022, on two (2) of the issues in dispute. First, Judge Dukes there held that Turner's Marina was the valid owner of the original Developer's Declarant Rights under the Covenants. Second, Turner's Marina was the valid owner of all existing rights of first refusal on the Lots in the Resort under the Covenants.

The case was referred with finality to the Master-in-Equity, Marvin H. Dukes III, on August 19, 2021 (R. p. __ Form 4 Order). After Judge Dukes was elected as a Circuit Court Judge, the South Carolina Supreme Court, by Order filed June 26, 2024, ordered that Judge Dukes would have concurrent jurisdiction to hear any matters pending before him as Master-in-Equity, including this case. (R. p. ___).

The trial of the case commenced on April 27, 2022 and continued over nine (9) days at irregular intervals, with the last day of trial being November 8, 2022. There were three (3) post-trial hearings before the Trial Judge to discuss various issues in the case, the Trial Judge's rulings on same, and disputes over various proposed Orders requested by the Trial Court. (R. p. __, __, __). On October 17, 2025, the Trial Court entered its Final Order. (R. p. ___.) Among other rulings, the Final Order: (1) declared the size limits on travel trailers in § 8.1 of the Covenants ("Size Limits") unenforceable by reason of laches and judicially "abandoned"; (2) created a new requirement that each Lot be cleared of the Owner's RV and made available for rental for at least forty-eight (48) consecutive hours at least once every one-hundred-eighty (180) days, requiring physical removal of the RV from the Resort during that period (the "48-Hour Rule"); (3) created a new rule that no RV may be left on any Lot for more than ten (10) days without being used for regular overnight accommodations (the "10-Day Rule"); (4) declared that Lots may not be used for "storage" of an RV ("No Storage Rule"); (5) construed the Covenants to prohibit Owners from residing in their RVs as their permanent living quarters ("No Residency Rule"); (6) approved the terms and conditions of Turner's Marina's then-existing rental program; (7) denied each of the Association's counterclaims; (8) declared Turner's Marina is entitled to independently enforce the Covenants; and (9) declined to award attorney's fees to either side. (Final Order, pp. 9–28; R. pp. ___–___.)

Both parties timely filed Motions for Reconsideration under Rule 59, SCRCP. (R. p. ____; R. p. ____). On February 12, 2026, the Trial Court issued a Form 4 Order denying said motions, with the sole exception that the Trial Court struck from its Final Order, based on no supporting evidence in the record, the non-substantive sentence on page 16, as follows: "The name "5th Wheel" actually comes from the company that first utilized the hitch in the early 1900s, the Martin's Fifth Wheel Company, they named their device after the round shape of the hitch. Hence the hitch itself is the "fifth wheel." The Association timely filed its Notice of Appeal on March 16, 2026. Turner's Marina thereafter filed its Notice of Appeal later that same day.

STANDARD OF REVIEW

There are two different standards of review applicable to the issues raised in this appeal by the Association.

1. **Declaratory Judgments and Enforcement of Covenants. (Issues on Appeal 2 through 6).**

South Carolina courts have long held that declaratory judgments in and of themselves are neither legal nor equitable. As the Court of Appeals stated in *Kinard v. Richardson*, 407 S.C. 247, 754 S.E.2d 888 (Ct. App. 2014), "[t]he standard of review for a declaratory judgment action is therefore determined by the nature of the underlying issue", quoting *Campbell v. Marion Cnty. Hosp. Dist.*, 354 S.C. 274, 279, 580 S.E.2d 163, 165(Ct. App. 2003). This foundational principle derives from *Felts v. Richland Cnty.*, 303 S.C. 354, 400 S.E.2d 781 (1991) and has been consistently reaffirmed across decades of South Carolina appellate decisions.

When the underlying issue in a declaratory judgment action is the enforcement of restrictive covenants—particularly where injunctive relief is sought—South Carolina courts treat the action as one in equity. The South Carolina Supreme Court in *Buffington v. T.O.E. Enters.*, 383 S.C. 388, 680 S.E.2d 289 (2009), directly held that "an action to enforce restrictive covenants by injunction is an action in equity," citing *S.C. Dep't of Nat. Res. v. Town of McClellanville*, 345 S.C. 617, 550 S.E.2d 299 (2001). This characterization applies even though restrictive covenants are contractual in nature. As the Court of Appeals explained in *Hoffman v. Saad Holdings, LLC*, No. 2024-000794, 2026 WL 836092 (S.C. Ct. App. Mar. 25, 2026), while "restrictive covenants are contractual in nature," an action to enforce them by means of injunctive relief is nonetheless an action in equity.

Because the issues discussed in Arguments 2 through 6 sound in equity, the appellate court exercises a broad scope of review. In *Buffington*, 383 S.C. 388, 680 S.E.2d 289 (2009), the Supreme Court confirmed that "on appeal from an equitable action, an appellate court may find facts in accordance with its own view of the evidence." The Court of Appeals in *SPUR at Williams Brice Owners Ass'n, Inc.*, 415 S.C. 72, 82, 781 S.E.2d 115, similarly stated that in an equitable action tried by a judge alone, the appellate court "may find facts in accordance with its own view of the preponderance of the evidence." However, this broad review is not unlimited. Appellate courts "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*, 383 S.C. at 391, 680 S.E.2d at 290; *Hoffman*, No. 2024-000794, 2026 WL 836092 (S.C. Ct. App. Mar. 25, 2026). As additionally stated in *SPUR at Williams Brice Owners Ass'n, Inc.,* 415 S.C. at 82, 781 S.E.at 121 "the appellant is not relieved of his burden of convincing the appellate court the trial judge committed error in his findings," quoting *Pinckney v. Warren*, 344 S.C. 382, 544 S.E.2d 620 (2001).

2. **<u>Application of Final Judgments in Billybob 1 and Billybob 2 (Issue 1) and Damages for Breach of Fiduciary Duty (Issue 7).</u>**

The application of collateral estoppel and res judicata are treated as an issue of law. Where a breach of fiduciary duty claim seeks monetary damages, it is also deemed an action at law. The standard of review for issues at law on appeal is that the trial judge's factual findings will be upheld on appeal unless they are without evidentiary support. *Jordan v. Holt*, 362 S.C. 201, 608 S.E.2d 129 (2005); *Kuznik v. Bees Ferry Assocs*., 342 S.C. 579, 538 S.E.2d 15 (Ct. App. 2000); *Future Grp., II v. Nationsbank*, 324 S.C. 89, 478 S.E.2d 45 (1996).

STATEMENT OF FACTS

In 1981, Outdoor Resorts, R.V. Resort and Yacht Club, a South Carolina General Partnership ("Developer"), developed a seven (7)-acre tract into a Recreational Vehicle ("RV") Park just to the north of Hilton Head Island, on Jenkins Island. (R. p. __). The project consisted of two hundred (200) individually owned RV lots ("Lot" or "Lots"), tennis courts, a swimming pool, and other related amenities. In addition, there was a 100-slip marina, fuel dock, boat landing, marina office, parking lots, and a roadway system (collectively the "Resort.") Properties within the Resort were owned by three (3) different groups. The R.V. Resort and Yacht Club Owners' Association, Inc. ("Association") held title to certain roadways and common areas (i.e., recreational buildings, swimming pool, tennis courts, etc.). Individual Lot owners held fee simple title to the two hundred (200) RV Lots ("Owner" or "Owners"). The Developer retained title to the marina, fuel dock, marina office, boat ramp, and other properties on the 1.42 acres of land (R. p. __).

The Resort property was subject to extensive restrictive covenants (R. p. __ "Covenants" P. Ex. 1) and a 99-year Lease (R. p. __ "99-Year Lease" P. Ex. 17) recorded on June 12, 1981.

The Covenants established the rights of the Developer and the Association as to the operation of the Resort. The Developer was designated the exclusive rental agent for the 200 RV Lots when the Owner elected to make the Lot available for rent and the Developer was entitled to receive fifty (50%) percent of the rentals. (R. p.___). Size and width restrictions on acceptable RVs, appropriate for 1981, were set forth in the Covenants, in § 8.1, as well as other rules and regulations. (R. p. __).

Under the 99-Year Lease, the Developer was the tenant and the Association the landlord for what was referred to as the "Recreational Facilities" at the Resort, "which included, among other things, a swimming pool, two tennis courts, docking, boathouse, and certain portions of the Clubhouse Complex" (R. p. __ Lease).

In 1993, the Developer sold its interest in the Resort, including all rights under the Covenants and the 99-Year Lease, to ORA of Carolina, Inc. ("ORA") (R. p. __). On August 30, 1999, ORA sold all of its interest in the Resort, including all Developer Rights, to Billybob's Marina, Inc. ("Billybob"), then owned by Bob and Arleen Stelmack (collectively "Stelmack"), including an assignment of all of its interest in the Resort and the Developer's rights.

Billybob was thereafter involved in two (2) lawsuits concerning the Covenants which are directly relevant to this appeal. In October 2000, the Association and its individual members filed suit against Billybob alleging three (3) causes of action disputing certain electricity and road maintenance fees, Billybob's published rules on the use of the Owners' Lots, other Covenant issues, and the handling of rental proceeds (R. p. __ - "Billybob 1"). Billybob filed various counterclaims as to certain Covenant issues. (R. p. __). On March 19, 2004, the Honorable Thomas J. Kemmerlin, Jr., as Special Referee, issued an extensive thirty-one (31) page Order ("Kemmerlin 2004 Order"), followed by a June 28, 2006 Order ("Kemmerlin 2006 Order"), generally ruling in favor of the Association, and awarding damages and attorney's fees to the Association (collectively "Kemmerlin Orders").

The Kemmerlin 2004 Order made numerous findings directly relevant to this appeal, including: (1) that the Covenants did not authorize Billybob, as assignee of the Developer, the right to make or amend rules concerning the use, occupancy, operation of the lots or common properties (R. p. __ Or. § 26); (2) that the 1981 Covenants "allow Members to leave their permitted vehicles on their lots even though they may not otherwise be using their lots," a reading the Special Referee found "entirely consistent with the intent of the Developer as expressed at the first meeting of the Owners and in the Developer's promotional literature," which told purchasers that "[e]very owner has the choice of offering his site for rent when he does not wish to use it for himself or his personal guests," and was "also consistent with the reality of ownership of large recreational vehicles on Hilton Head Island where storage for such vehicles is not generally available" (R. p. __ Kemmerlin 2004 Order ¶¶ 27, 41); and (3) that BillyBob violated the Covenants by "[a]dopting the rule that . . . permitted vehicles may not be left on lots even when such lots are not being used" and by "[a]dvising potential and actual purchasers of lots that Members may use lots for vacation or investment only" (R. p. __ Kemmerlin 2004 Order ¶ 45(B), (F). Billybob appealed the Kemmerlin Orders granting monetary damages and attorney fees, but it did not appeal any other finding or provision of either of the two Orders issued by Special Referee Kemmerlin. (R. p. __ Order). Thus, the above findings in the Kemmerlin 2004 Order were final and binding on Billybob, its successors and assigns.

On June 7, 2006, Billybob filed suit against two Lot owners at the Resort, asserting both Lot owners were violating the Covenants by permanently residing in their RVs ("Billybob 2"). The Trial Judge issued an Order that the "**Covenants do not prohibit lot owners from**

permanently residing on their lots." (R. p. ___.) Billybob appealed that decision and the Court of Appeals affirmed said decision. *Billybob's Marina, Inc. v. Blakeslee*, Unp. Op. No. 2008-UP-332 (Ct. App. 2008). This is a final judicial determination that Lot Owners can permanently reside on their Lots in an otherwise permissible RV, binding on Billybob, its successors and assigns.

The original 1981 Covenants contained limits on the size and length of an RV allowed at the Resort. Section 8.1 provided that travel trailers "longer than thirty-five (35') feet or wider than eight (8') feet in their fully installed condition" ("Size Limits") were not allowed. (R. p. __ Cov. § 8.1). Over time, as newer and more modern RVs exceeded the 1981 Size Limits, Billybob, at least by 2006, quit enforcing the Size Limits and allowed Lot Owners, their guests, and third-party renters to bring in RVs exceeding the original Size Limits. (R. p. __ 9/28; 8/54; 4/37-38; 2/254-255).

In 2006, John and Serena Bentley (collectively "Bentley") purchased the stock of Billybob from Stelmack and took over operation of the Resort. They hired Neil Turner, then eighteen (18) years old, shortly thereafter as an employee (R. p. __). For the next eleven (11) years, Neil Turner worked in all aspects of Billybob's business operations, including handling lot rentals, reservations, marina operations, etc. (R. p. ___). Under the Bentley's management and control of Resort, they also did not enforce the Size Limits under § 8.1 of the Covenants, allowing travel trailers, fifth (5^{th}) wheelers and other RVs to occupy the Resort in excess of said limits. (R. p. __).

On December 21, 2017, Bentley sold Billybob's assets, including the Developer's rights, to Neil Turner for $4,600,000, with Neil Turner taking title as Turner's Marina, LLC ("Turner's Marina" . R. p). Turner's Marina took title to the 1.4 acres, as well as receiving an assignment from Billybob of all rights under the Covenants and the 99-year Lease. Turner's Marina, through September 1, 2020, the first thirty-three (33) months of its ownership and operation, also did not enforce the RV Size Limits (R. p. __). Thus, from 2006 to September 1, 2020—a period in excess of fourteen (14) years, the Size Limits were not enforced.

On May 1, 2020, Turner's Marina filed suit for a Declaratory Judgment on a host of issues. The Association, by Counterclaim, also requested a Declaratory Judgment on other issues, as well as asserting claims for monetary damages. On September 1, 2020, Turner's Marina began to strictly enforce the Size Limits, in an effort to force the Association to give up the right for Owners to permanently reside in their RVs (R. p. __ Tr. p. 2/26; 3/91; 3/100; 5/200; 5/215; 9/29-30; D. Ex. 19). This action resulted in a substantial reduction of the nights the Lots were rented.

ARGUMENT

1. The Trial Court erred in refusing to give preclusive effect to the final judgments in Billybob 1 and Billybob 2, which held that Owners may leave their RVs on their Lots when not in use, that Owners need not make their Lots available for rental, and that the Covenants place no limit on how long an Owner may use or occupy his Lot in a permissible RV(i.e.. permanently reside in the RV), holdings which bind Turner's Marina as Billybob's assignee, and in entering rulings directly inconsistent with those judgments.

Twice before the courts of this State have entered final judgments construing the very Covenants, and the very Declarant rights, which are now on appeal in this matter. In BillyBob 1 the holder of the Declarant rights litigated—and lost—whether an Owner may leave a recreational vehicle on his deeded Lot when not using it, whether a Lot Owner had to participate in the rental program, and whether the Owners' use of their Lots is confined to "vacation or investment." In BillyBob 2 it litigated—and lost—whether the Covenants' prohibition on "permanent living quarters" limits the length of time an Owner may occupy a permissible RV on his Lot. Billybob 2 expressly found an Owner could permanently reside in his RV at the Resort. Turner's Marina took those Declarant rights by assignment years after both of the previous judgments became final and is therefore bound by them. The Trial Court nonetheless treated the prior judgments as merely "instructive" rather than binding and then entered four rulings—the 48-Hour Rule, the 10-Day

Rule, the No Storage Rule and the No Residency Rule. (R. p. __). These four rulings by the Trial Court squarely contradict what those previous judgments finally determined. (R. p. __). Those rulings by the Trial Court were in error and require reversal of the inconsistent portions of the Final Order on appeal in this matter.

A. The prior judgments finally determined the issues the Trial Court re-decided.

i. Billybob 1

In his thirty-one-page Order of March 19, 2004 ("Kemmerlin 2004 Order") Special Referee Kemmerlin found as fact and concluded as law that "[t]he 1981 Covenants . . . allow Members to leave their permitted vehicles on their lots even though they may not otherwise be using their Lots," reasoning that this reading was consistent with the Developer's expressed intent and "with the reality of ownership of large recreational vehicles on Hilton Head Island where storage for such vehicles is not generally available." (R. p. __section 41). He also cited the Developer's original representations to Owners and its promotional literature, which stated : "The Outdoor Resorts individual site owner has complete fee simple title to his site and the undivided interest ownership of all common areas and resort facilities... Every owner has a choice of offering his site for rent when he does not wish to use it for himself or his personal guests" (R. Order, section 41) . The same Kemmerlin 2004 Order held that adopting a rule that stated permitted vehicles "may not be left on lots even when such lots are not being used" was itself a violation of the Covenants and was not permissible. (R. p. __). The Kemmerlin 2004 Order further determined that the Covenants do not authorize the Developer, or any successor or assign of the Developer, to adopt or amend regulations respecting the use, occupancy, or operation of the Lots, and that an Owner did not have to rent his vacant Lot. (R. p. __). Said Order also upheld three fees sought to be imposed by the Association—the disputed road, electricity, and telephone fees (collectively "Three

Fees"); determined there was insufficient evidence to prove that Plaintiff Blakeslee permanently resided on his Lot; and awarded attorney fees to the Association.

BillyBob appealed only three issues determined in that litigation—(1) the Three Fees; (2) whether Plaintiff Blakeslee permanently resided on his Lot; and (3) the award of attorney fees. (R. p. __). None of the other findings in the Kemmerlin 2004 Order were appealed. In an unpublished opinion, the Court of Appeals affirmed Special Referee Kemmerlin's rulings on the Three Fees, his holding that Billybob had failed to prove Dwight Blakeslee was a permanent resident, but reversed the award of attorney's fees to the Association. *RV Resort and Yacht Club Owners Ass'n, Inc. v. BillyBob's Marina, Inc.*, 2007-UP-556, 2007 WL 8400159 (S.C. Ct. App., Nov. 6, 2007).

BillyBob appealed the Court of Appeals decision to the South Carolina Supreme Court, which granted certiorari, and subsequently reversed the Court of Appeals as to the Three Fees. The Court stated the other issues were no longer in dispute. *RV Resort & Yacht Club Owners Ass'n, Inc. v. BillyBob's Marina, Inc.*, 386 S.C. 313, 320, 688 S.E.2d 555, 559 (2010). Every other finding and conclusion in the Kemmerlin 2004 Order therefore became a final, un-appealed judgment. *Walker v. Hannon*, 191 S.C. 14,18, 3 S.E.2d 243, 244 (1939) ("This Court has consistently held, that an order not appealed from is binding on all parties before the Court constitutes the law of the case and, when questioned, is res judicata.") (citations omitted).

ii. Billybob 2

On June 7, 2006, BillyBob sued two Lot Owners for allegedly using their Lots as permanent residences. The Trial Court ruled against BillyBob, and the Court of Appeals affirmed, holding that "**[t]he Covenants do not place any limit on the amount of time owners may use or occupy their lots" and "do not prohibit lot owners from permanently residing on their lots.**" *BillyBob's Marina, Inc. v. Blakeslee*, 2008-UP-332, 2008 WL 9843978, at *2 (S.C. Ct. App.

July 1, 2008) (unpublished). BillyBob did not appeal further, and that judgment likewise became final and binding upon the parties. *Walker*, 191 S.C. at 14, 3 S.E.2d at 244.

B. Turner's Marina, as assignee and successor-in-interest, is bound by the Final Decisions in BillyBob 1 and BillyBob 2 Under the Doctrine of Collateral Estoppel.

i. Collateral Estoppel Binds the Parties to the Previous Orders and Judgments.

Collateral estoppel prevents a party from relitigating an issue that was decided in a previous action—regardless of whether the claims in the two actions are the same. Turner's Marina is attempting to do just that—relitigate issues that have already been decided, and the Trial Court erred by issuing an order that was in conflict with issues that had already been litigated, ruled upon, and decided by previous courts.

The modern application of Collateral Estoppel was first recognized in South Carolina in *Beall v. Doe,* 281 S.C. 363, 315 S.E.2d 186 (Ct. App. 1984). Subsequently, the Court in *Carolina Renewal, Inc. v. South Carolina Department of Transportation,* 385 S.C. 550, 554, 684 S.E. 2d 779, 782 (Ct. App. 2009) provided a good summary of the current elements of the doctrine of Collateral Estoppel.

> Collateral Estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same. The party asserting collateral estoppel must demonstrate that the issue in the present lawsuit was: **(1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment."** While the traditional use of collateral estoppel required mutuality of parties to bar relitigation, modern courts recognize the mutuality requirement is not necessary for the application of collateral estoppel where the party against whom estoppel is asserted had a full and fair opportunity to previously litigate the issues." Snavely v. AMISUB of S.C., Inc., 379 S.C. 386, 398, 665 S.E.2d 222, 228 (Ct. App. 2008). (emphasis added)

Citing numerous South Carolina decisions, the Court in *Carolina Renewal* confirmed "... the identity of the parties, and their relationships to one another, is simply not a concern when deciding whether to apply the doctrine of collateral estoppel." *Id.* at 555, 684 S.E. 2d at 782. "The doctrine of collateral estoppel prevents the relitigating of *issues,* not claims, necessarily determined in a former proceeding regardless of whether the identity of the causes of action in successive lawsuits are the same." *Id.* at 556, 684 S.E. 2d at 783.

As shown in Billybob 1 and Billybob 2, the courts have previously made final, un-appealed decisions on the following issues being relitigated by Turner's Marina: (1) the right of Owners to leave their RV on their lots and to store same; (2) the Covenants placed no restrictions on the use of the Owner's Lots when not in use; (3) an Owner has the right to decide if his vacant Lot should be rented; (4) that the prohibition on "permanent living quarters" places no limit on an Owner permanently residing on his Lo. Thus, an Owner can permanently reside in his RV. All of the findings and conclusions were essential to the core disputes resolved in the prior case and are thus binding on Turner's Marina in this litigation.

ii. Turner's Marina is Bound by BillyBob 1 and BillyBob 2 as the Successor In Interest to BillyBob Under the Doctrine of *Res Judicata.*

In addition to the application of Collateral Estoppel, Turner's Marina is barred from relitigating these issues as an assignee of BillyBob pursuant to the doctrine of *res judicata.*

For *res judicata* to apply, the following three (3) elements must be present.

1. Identity of the parties;
2. Identity of the subject matter; and
3. Adjudication in the former suit.

Hilton Head Center of South Carolina, Inc. v. Public Service Commission of South Carolina, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987); *Riedman Corporation v. Greenville Steel Structures, Inc.,* 308 S.C. 467, 419 S.E.2d 217 (1992). Further, an assignee stands in the shoes of its assignor and is bound by a judgment adjudicating the assigned rights that was rendered before the assignment.

South Carolina Courts have held an assignee "stands in the shoes" of the assignor and is bound by the prior judgment as to issues previously litigated. *Columbia Nat. Bank of Columbia v. Arthur*, 154 S.C. 147, 151 S.E. 274 (1930). In that case, Moore conveyed land to his daughter, Arthur. Arthur then obtained a Mortgage with Palmetto National Bank ("Palmetto"). Moore then sued his daughter and Palmetto to rescind the deed based on a conspiracy theory. Palmetto agreed to be bound by the Court's decision. At trial, the Court rescinded the deed to the daughter, restoring title to the father. Palmetto subsequently assigned the Note and Mortgage to Columbia National Bank ("Columbia"), who later filed a foreclosure. The father took the position there was no valid deed granting Arthur title since the deed granting her title was rescinded. The Supreme Court agreed, holding that the assignee bank could not foreclose against the life estate because the question had been adjudicated against its assignor, and dismissed the foreclosure on the grounds of res judicata, stating as follows:

> In the present case, the plaintiff [Columbia] stands in the shoes of its assignor, the Palmetto National Bank, and the same issue is now involved between it and the defendant Moore. As the decree in the former case adjudicated this issue, the matter is res judicata and cannot be litigated again in the present case.

Columbia, 154 S.C. at 153, 151 S.E. at 276.

The permissibility of leaving a permitted vehicle on a Lot when not in use, the absence of any temporal limit on an Owner's use of the Lot, the right of an Owner to not to put his Lot in the rental program, and the meaning of "permanent living quarters" were actually litigated, directly determined, and necessary to those prior judgments, which concerned the same property, the same Covenants, and the same Declarant rights. Turner's Marina may not relitigate them and the Trial Court cannot make inconsistent rulings regarding same.

In this case, Turner also "stands in the shoes" of BillyBob and is bound by the prior final judgments determining the same Declarant's Rights under the Covenants. Turner cannot relitigate the same issues again, nor can the Trial Court rule on the same issues again. The same principle was confirmed in *Bennett v. Hindman,* 176 S.C. 151, 179 S.E. 794 (1935), where the Court stated if a note and mortgage was declared void and thereafter assigned, the assignee would be bound by the prior judgment. *See also,* Am. Jur. 2d Judgments § 570; 50 C.J.S. Judgments § 1106.

The same result is reached as to a successor-in-interest, such as Turner's Marina. 50 C.J.S. Judgments § 1129 ("In respect of either real or personal property, a successor-in-interest is concluded by a judgment for or against the party from whom they derive title . . . where the succession accrued subsequent to the rendition of the judgment.").

Turner's Marina as the assignee and successor-in-interest to the very same Declarant Rights which were the subject of BillyBob 1 and BillyBob 2 is bound by said judgments. The conclusion is not in dispute. In partially granting Turner's Marina's Motion for Summary Judgment, the Trial Court found that ORA assigned "the Developer's rights" to Billybob on August 25, 1999, that Billybob assigned them to Turner's Marina on December 21, 2017, and that Turner's Marina "is the valid and lawful owner of the original Developer's 'Declarant Rights' under the Covenants." (Nov. 8, 2022 Order, Findings of Fact ¶¶ 5–7, Conclusion of Law A; R. p. ___.) Turner's Marina conceded as much . At the Rule 59(e) hearing its counsel stated: "We agree a hundred percent that we are bound by those orders and those cases." (Hr'g Tr. Nov. 25, 2025, p. 30, ll. 4–20; R. p. ___.) Its only qualification was that the same judgments also bind the Association—a proposition the Association has never disputed and does not dispute here. When the Trial Court asked whether Turner's Marina stands in the shoes of its predecessor, counsel answered: "He absolutely does." (Hr'g Tr. Nov. 25, 2025, p. 40, ll. 17–19; R. p. ___.) Having obtained that adjudication, Turner's Marina cannot now disclaim the succession on which it rests. Turner's Marina went so far as to record in the Beaufort County Register of Deeds a document captioned: "Notice of Judicial Invalidation of Amendment to Declaration of Covenants and Restrictions For Outdoor Resort, R.V. Resort and Yacht Club and Provisions for the R.V. Resort and Yacht Club Owners' Association Inc"("Notice"), which included a full copy of the Kemmerlin 2004 Order (R.D. Ex. 6). In said Notice, Turner's Marina states: "by virtue of that certain Absolute Assignment recorded on 27 December 2017 . . . Turner succeeded to the interests of BillyBob's as the Developer under the Declaration." (D. Ex. 6, p. 2; Tr. Day 1, p. 233, l. 5 – p. 234, l. 2; R. p. ___.) The Notice further stated certain Covenant amendments recorded by the Association were deemed invalid under said Order. Turner's Marina cannot seek what it perceives as the benefits of the Kemmerlin 2004 Order(i.e. Covenant amendment invalid,), while at the same time seeking to avoid the "unfavorable findings" of the same Order. The alternative result would be inequitable: if a judgment against the holder of the Declarant rights did not follow those rights into an assignee's hands, every adverse adjudication could be escaped by assigning the rights to a newly formed entity for a fourth or fifth bite at the apple — precisely the "litigation merry-go-round" the preclusion doctrines exist to end.

The identity of parties is met based on the legal and contractual relationship between BillyBob and Turner's Marina under *Columbia National, Bennett,* and the other legal authorities set forth above. Turner's Marina is bound by the final court judgments as to said Declarant Rights under the doctrine of *res judicata.*

C. The unpublished status of Billybob 2 does not diminish its preclusive force.

Rule 268(d)(2), SCACR, provides that unpublished opinions have no precedential value and "should not be cited *except in proceedings in which they are directly involved.*" (emphasis added). The Trial Court appears to rely on this rule for not applying the holding in Billybob 2 allowing an Owner to permanently reside in his RV. This is a misapplication of the rule. The instant case is such a proceeding: the parties here litigate the same Covenants and the same Declarant rights that were directly involved in the BillyBob appeals. The Rule confirms that an unpublished decision remains a fully enforceable final judgment binding on the parties and their privies; it does not mean the decision may be ignored just because it is unpublished, nor does the rule state that the prior judgments are merely instructive. A judgment does not lose its res judicata effect merely because the affirming opinion was unpublished.

D. The rulings in the Final Order cannot be reconciled with the prior judgments and must be reversed.

The Final Order's 48-Hour Rule, 10-Day Rule, the No Storage Rule, and the No Residency Rule each directly contradict the Kemmerlin Orders and the final decision in Billybob 2, final adjudications that permitted vehicles may remain on Lots "even though they may not otherwise be using their Lots" and that the Covenants place no temporal limit on an Owner's use or occupancy of the Owner's Lot. (R. p.) . Each is likewise irreconcilable with the final judgment in BillyBob 2 that the Covenants "do not place any limit on the amount of time owners may use or occupy their lots" and "do not prohibit lot owners from permanently residing on their lots." (BillyBob 2, 2008 WL 9843978, at *2.) The Final Order itself acknowledges the point. It recognizes that BillyBob 2 "speaks directly to the issue," and it holds that a Lot Owner in a conforming RV "is not constrained by the recorded Covenants from staying in a Recreational Vehicle on their lot continuously as long as they do not convert the RV into permanent living quarters." (Final Order, p. 11; R. p. ___.) The four rules cannot be reconciled with that holding any more than with the judgments it acknowledges: an Owner who must clear the Lot every 180 days, who may not leave the RV in place unused for more than ten days, who may not "store" it on the Lot, and whose Lot "shall not be used as permanent living quarters" (Final Order, p. 13) is not staying "continuously." Turner's Marina's own counsel abandoned the contrary reading at the Rule 59(e) hearing: "There is no time limitation in the document." (Hr'g Tr. Nov. 25, 2025, p. 39, ll. 18–20; see also id. p. 55, ll. 5–7 ("as long as he's . . . in an otherwise conforming recreational vehicle, there's no time limitation on how long someone can stay on the lot"); R. pp. ___.)

Assuming, *arguendo*, this Court determines that Billybob 1 and Billybob 2 do not completely dispose of the four new rules discussed above, (10-Day Rule, 48-Hour Rule, No Residency Rule, No Storage Rule), the Association has set forth additional arguments as to each rule in Arguments 2 through 5 below.

2. The Trial Court exceeded its authority by judicially creating a new rule that an RV cannot be left upon a lot for more than ten (10) days without being used for regular overnight accommodations ("10-Day Rule") that appears nowhere in the Covenants and is contradicted by its express terms.

A. A court may not rewrite unambiguous Covenants under the guise of construction or equity.

Restrictive covenants are contractual in nature and are construed according to their plain and ordinary meaning as of the time of execution. *Taylor v. Lindsey*, 332 S.C. 1, 4, 498 S.E.2d 862, 863 (1998). Restrictions 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*, 383 S.C. at 392, 680 S.E.2d at 291. "[A] court has no authority to rewrite a contract and impose unwanted obligations and terms under the guise of specific performance or judicial construction." *Lowcountry Open Land Trust v. Charleston S. Univ.*, 376 S.C. 399, 411, 656 S.E.2d 775, 781 (Ct. App. 2008) (reversing the portion of a master's order requiring the parties to renegotiate and enter a new written extension agreement); *accord Amick v. Hagler*, 286 S.C. 481, 485, 334 S.E.2d 525, 527 (Ct. App. 1985) (trial court had no authority to give one party the option of requiring the other to provide owner financing, because that term was not part of the parties' contract).

These principles operate with double force here. The Trial Court created an entirely new obligation on the Lot Owners by providing that an RV cannot be left vacant or unused on a Lot for more than ten (10) days (R. p. __ "10-Day Rule"). The Trial Court did not merely construe a restriction narrowly or broadly; it created restrictions out of whole cloth, in an instrument that says the opposite. Section 8.1 of the Covenants expressly provides that the limitations on personal property remaining on Lots "shall not apply to any permissible vehicle or trailer which may be allowed to remain on the Lot even though not in use." (R. p. ___). The Trial Court itself quoted this provision and correctly held in its Final Order under Issue 8, that a towing vehicle need not remain on the Lot because "the Covenants explicitly provide in Article VIII section 8.1 that the Recreational Vehicle can remain on the lot even when it is not in use" (R. p.__ lines ___). Yet the same Order forbids exactly what that provision expressly allows: it decrees that "[n]o recreational vehicle shall be left upon any Lot for more than ten (10) days without being used for regular overnight accommodations" (R. p. ___ Order, p. 14).

Equity is not a license to draft new servitudes. The Trial Court invoked its equitable discretion to "construe these forty-four-year-old, oft-conflicting Covenants to embrace today's modern world." (Final Order, p. 13; R. p. ___). But no equitable doctrine permits a court of equity to impose upon 200 fee-simple Lot owners, and upon the Association, completely new affirmative obligations that appear nowhere in the recorded instrument from which the court's authority to act derives, and that contradict its express terms. Under *Buffington*, 383 S.C. at 392, 680 S.E.2d at

291, doubts are resolved in favor of the free use of property. Here there is not even doubt, because the Covenants expressly permit an RV to remain.

The Trial Court's own words at the April 17, 2025, post-trial conference with counsel as to the wording of the Final Order confirm that the time rules were invented, not construed. The Trial Court acknowledged the Covenants are "not specific on use" and that it was crafting "an equitable finding—because we're already, sort of, stretching the limits of it with how long it has to be off the lot and that kind of thing." (R. p. __line April 17, 2025 p. 19, l. 4 – p. 20 l 24;); that it was addressing "something that's not addressed by the Covenants, but equity demands that . . . some number be put in here" (R. p. ___ 23, lines 6-10); that in proposing a non-use period it was "putting a number out there" (R. p. ___19 line 24 to p. 20 line 1); and that "there is not a right written in any of these things to any lockout period." (R. p. ___p.110, lines 22-24). It directed Turner's Marina's counsel to "put something together that does it that is ten days," while declining to commit: "I'm not going to say that is the one I'm going to sign, but it seems like the only solution to this particular problem." (R. p. __ 30 lines 18-24.) The Trial Court articulated the removal requirement was not construction of the instrument but modification of residents' behavior: "these people that have their potted plants all the way around there, and they're probably hooked up to mostly permanent power and water . . . Moving it for one hour is going to rock their world and hopefully break this cycle." (R. 4/17/25 P. 46, lines 18-20 "). A "cycle" of continuous occupancy in a conforming RV is, however, precisely what the final judgments in Billybob 1 and Billybob 2 and the language of the Covenants place beyond restriction. A restriction the Trial Court itself describes as a number "put out there" to fill a gap the Covenants do not address is not an exercise of construction; it is the creation of a new servitude, which South Carolina law forbids.

Turner's Marina in fact agreed with the Association's concerns post-trial. At the Rule 59(e), SCRCP, hearing on November 25, 2025, its counsel conceded: "In retrospect, I don't believe that the Court, respectfully, is within its authority to impose what I kind of — arbitrary numbers" (R. p. __ Tr.—; R. p. 53 line 1-7); and "I think the Court was trying to equitably find a way to kind of balance things out. And, unfortunately, I don't think you can do that . . . Even though some of it might help us, I don't think it will hold on appeal." (R. p.45, lines 19-25) Counsel likewise conceded that "an owner can leave his qualifying unit there for a year or more, as long as he's not using it for a permanent residence. . . . That means they don't have to rent it. That means they are not obligated to put it in the rental program." (R. p. __ Tr. 59 Lines 11 to 19) The Trial Court itself, denying reconsideration, acknowledged: "some of it is arbitrary. Some of it was written from, you know, kind of from an equity perspective trying to split the baby, which you know is not the best way to do things." (R. p.62, lines 10-16). The judicially created time rules are thus defended by no participant in this appeal, not the Association, not Turner's Marina, and not, in candor, the Trial Court that authored them.

B. The new obligations purport to bind 200 individual Lot Owners who were not parties to this action.

The invalidity of the judicially created 10-Day Rule runs deeper still, and it aggrieves the Association directly. The Order overrules the Association's rulemaking authority under Section 8.11 of the Covenants with obligations the Association can neither perform nor enforce, over land it does not own. These are personal, affirmative duties imposed on each of the 200 individual fee-simple Lot Owners. Yet not one Lot Owner is a party to this action. The only defendant is the Association, a nonprofit corporation that owns no Lots—a point made to the Trial Court in the very conference at which the rules were drafted: "The YCOA doesn't own any lots. The Association owns no lots, and each of the 200 property owners have a duty under it." (R. p. ___.)

It is elementary that a decree in personam binds only parties and their privies. *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 395 U.S. 100, 110 (1969) ("It is elementary that one is not bound by a judgment in personam resulting from litigation in which he is not designated as a party . . . ."); *Taylor v. Sturgell*, 553 U.S. 880, 892–93 (2008) (due process forbids binding non-parties absent narrow exceptions); *cf. Richburg*, 290 S.C. 434, 351 S.E.2d 166(1986) (judgments bind parties and those in privity with them). The Lot Owners were not parties, were not served, were not heard, and were given no opportunity to litigate whether their fee-simple estates should be encumbered with a removal schedule that appears nowhere in their recorded chains of title. The Association's presence as defendant supplies no substitute. Whatever capacity the Association has to defend claims about its own conduct, it cannot consent to, and this Final Order does not purport to rest on its consent to, the imposition of new servitudes on land the Association does not own. The obligations run against the Owners personally and against their individual titles.

3. The Trial Court exceeded its authority by creating a new rule that an Owner's RV must be removed from an Owner's Lot for at least forty-eight (48) consecutive hours at least once every one-hundred eighty (180) days ("48-Hour Rule").

A. A Court may not re-write unambiguous Covenants under the guise of construction or equity.

In the same manner the Trial Court created the new 10-Day Rule, the Trial Court created a second new rule requiring that an RV be removed for forty-eight (48) hours every one-hundred and eighty (180) days ("48-Hour Rule"). Again, there is absolutely no language in the Covenants, or any other document, that serves as a basis for this completely new requirement. "[A] Court has no authority to rewrite a contract and impose unwanted obligations and terms under the guise of specific performance or judicial construction." *Lowcountry Open Land Trust*, 376 S.C. at 411, 656 S.E.2d at 781. No party or witness proposed the 48-Hour Rule, and no exhibit references it.

B. The 48-Hour Rule is not necessary to comply with any County Ordinance.

The apparent genesis of the 48-Hour Rule was the Trial Court's desire to facilitate compliance with Beaufort County Code of Ordinances § 78-68(c): "If everyone does their 48 hours and 180 days, they're covered." (R. pp. __–__; Hr'g Tr. Apr. 17, 2025, p. 52, lines 15–16).

However, the County Ordinances requires no such removal. As enforced by Beaufort County, § 78-68(c) provides an RV owner with two (2) options to comply. First, an Owner can simply remove his RV from the Resort once every one-hundred eighty (180) days. Second, an Owner may submit a written certification to Beaufort County and advise that his RV is currently registered with the SCDMV, is road ready, and will be removed from the site in the event of an impending hurricane. (R. p. __ Tr. p. __ D Ex 34). Thus, any attempt to justify the 48-Hour Rule based on § 78-68 is illogical and without basis.

Second, even without considering how Beaufort County applies the Ordinance, nothing in § 78-68 (c) sets forth any temporal limit on removal. The language of § 78-68(c) simply states the RV must be "on site for fewer than 180 consecutive days…" (R. p. __ P. Ex. 4). Arguably, moving the RV for five (5) minutes, an hour, or just a day would comply with the stated requirements. Thus, the Ordinance does not and cannot serve as a basis or foundation for the creation of a 48-hour removal requirement.

C. Lot Owners Not Parties to Case.

Additionally, as was the case with the new 10-Day Rule, the 48-Hour Rule imposes a mandatory obligation on the Lot Owners, who are not parties to this case. Creating such an obligation on 200 Lot Owners who were not parties to the case is not permissible.

4. The Trial Court exceeded its authority by creating a new rule that an Owner's RV cannot be stored on his Lot ("No Storage Rule").

The third new rule created by the Trial Court was that a Lot Owner cannot store his RV on his lot (R. p. __ "No Storage Rule" Order; pp. 14-15). As with the 10-Day Rule and the 48-Hour Rule, the No Storage Rule is not founded upon any express provision of the applicable Covenants but is simply an attempt to rewrite the Covenants under the guise of judicial construction, which is prohibited. *Lowcountry Open Land Trust,* 376 S.C. at 411, 656 S.E.2d at 781 (R. p. __ P. Ex. 1).

A. Covenants Do Not Contain Any Reference to the No Storage Rule

§ 8.1 of the Covenants expressly allows a Lot Owner's RV to remain on the Lot when not in use. At the end of § 8.1, setting forth detailed restrictions on the use and occupancy of the Lots, the Covenants state "...provided further, however, that the foregoing shall not apply to any permissible vehicle or trailer **which may be allowed to remain on the lot when not in use**." (emphasis added) (R. p. __). Nothing could be clearer.

The Trial Court's apparent reluctance to simply enforce the clearly stated intent of the Declarant appears to be based on concerns expressed by Turner's Marina as to the negative impact on his current lot rental business. (R. p. __ Order p. 14) This is not a valid factor in construing the Covenants. The Court must focus on the original intent of the Developer in 1981. *Hardy v. Aiken*, 369 S.C. 160, 166, 631 S.E.2d 539, 542 (2006) (restrictive covenants are construed according to their plain and ordinary meaning at the time of execution); *Palmetto Dunes Resort v. Brown*, 287 S.C. 1, 6, 336 S.E.2d 15, 18 (Ct. App. 1985) (the paramount rule is to ascertain and give effect to the intent of the parties as determined from the whole document). As set forth in the Kemmerlin 2004 Order, the storage of RVs on lots was clearly contemplated in 1981 due to the circumstances existing in 1981 where there were no available places to store an RV and the Referee Kemmerlin also cited the stated representations of the original Developer at the first meeting with the Owners and its promotional material which stated an Owner can elected to rent his Lot if he does not wish to use it for himself (R. 2004 Order § 27, 4). The Trial Court cannot change the language of the Covenants in an attempt to address Turner's Marina's business concerns in 2026. There is simply no language in the Covenants that imposes this restriction or supports such a result.

B. No Storage Rule Being Applied to Individuals Who Are Not Parties to Case.

Finally, as is true for the 10-Day Rule and 48-Hour Rule, the No Storage Rule is being applied against Lot Owners who are not parties to this case, which is impermissible.

5. The Trial Court erred in construing the Covenants' prohibition on "permanent living quarters" as a limit on how long an Owner may occupy a permissible RV on his Lot ("No Residency Rule").

A. The "permanent living quarters" clause describes what may be placed on a Lot, not how long an Owner may stay.

Section 8.1 prohibits placing on a Lot "any permanent or semi-permanent structure or any vehicle which is designed as permanent living quarters," and then lists what it means: screen rooms, carports and permanent overhangs; mobile homes; structures that cannot be transported by the pulling vehicle; structures on blocks or with removed hitches; structures "not intended to be temporary, that is, . . . not . . . readily moveable"; and "any structure designed, intended or used as permanent living quarters." (R. p. __ P. Ex. 1, § 8.1.) Every item on that list describes the character of the thing placed on the Lot — a road-ready recreational vehicle on one side of the line, a fixed dwelling on the other. None describes a length of stay. The same section then provides that its limits on personal property remaining on a Lot "shall not apply to any permissible vehicle or trailer which may be allowed to remain on the Lot even though not in use." (Id.)

That is how BillyBob 2 read it. The Court of Appeals agreed that § 8.1 "is intended to exclude mobile homes and permanent structures so as to prevent the resort from becoming a mobile home park," but held that the Covenants "do not place any limit on the amount of time owners may use or occupy their lots," and that the "permanent living quarters" language does not "restrict[] an owner's use of their lot to a certain period of time when they are using an otherwise acceptable vehicle on the lot." (BillyBob 2, 2008 WL 9843978, at *2.) The Association does not ask this Court to hold that a mobile home, a structure on blocks, or a trailer with its hitch removed may be kept on a Lot; § 8.1 forbids those, and the Association has always said so. (Hr'g Tr. Apr. 17, 2025, p. 39, ll. 5–15; p. 43, ll. 10–15; R. p. ___.) It asks only that the clause be given the meaning the final judgment in BillyBob 2 gave it, which is also the meaning the rule of strict construction requires. *Hardy v. Aiken*, 369 S.C. 160, 166, 631 S.E.2d 539, 543 (2006) (restrictions on the use of property are strictly construed, with all doubts resolved in favor of the free use of property).

B. The Final Order applies the clause both ways, and the two readings cannot both stand.

At page 11 the Final Order accepts BillyBob 2: a Lot Owner in a conforming RV "is not constrained by the recorded Covenants from staying in a Recreational Vehicle on their lot continuously as long as they do not convert the RV into permanent living quarters." (Final Order, p. 11; R. p. ___.) Two pages later the Order "begin[s] with the conclusion that the resort and the Lots thereon, shall not be used as permanent living quarters," declares that "[t]he very essence of the repeated mantra of the Covenants, is that the resort is to serve transient campers and Lot owners and their guests for temporary stays," and from that premise derives the 10-Day Rule, the No Storage Rule and the 48-Hour Rule. (Final Order, pp. 13–15; R. pp. ___.) Declaration 6 then provides that it is a violation of the Covenants "to utilize any structure, such as a recreational vehicle, as permanent living quarters." (Final Order, p. 17; R. p. ___.) Read together with pages 13 through 15, the Order treats an Owner who lives in a road-ready RV on his own Lot as having "converted" it into permanent living quarters by the passage of time. That is the reading

BillyBob 2 rejected, and it is the reading the Trial Court itself rejected at page 11. The Trial Court's words during the April 17, 20205 post-trial conference confirm that the target was duration, not structure: the removal requirement was meant to "break this cycle" of "people that have their potted plants all the way around there, and they're probably hooked up to mostly permanent power and water." (Hr'g Tr. Apr. 17, 2025, p. 46, ll. 18–20; R. p. ___.) Turner's Marina's counsel conceded the correct reading at the Rule 59(e) hearing: "as long as he's . . . in an otherwise conforming recreational vehicle, there's no time limitation on how long someone can stay on the lot." (Hr'g Tr. Nov. 25, 2025, p. 55, ll. 5–7; R. p. ___.)

The Court should therefore modify Declaration 6, and strike the "shall not be used as permanent living quarters" premise at page 13, so that the Final Order declares — consistently with BillyBob 2 and with its own page 11 — that the "permanent living quarters" prohibition of § 8.1 governs the character of the structure or vehicle placed on a Lot and does not limit the length of time an Owner may occupy an otherwise permissible recreational vehicle on his Lot.

C. No Storage Rule Being Applied to Individuals Who Are Not Parties to Case.

As is true for the 10-Day Rule, the 48-Hour Rule, t and he No Storage Rule, the No Residency Rule is being applied against Lot Owners who are not parties to this case, which is impermissible.

6. The Trial Court erred in implicitly finding Turner's Marina's current rental policy of an Owner reserving his Lot up to 48 hours prior to his usage can be unilaterally changed by Turner's Marina.

One of the more contested issues during the nine (9) day trial of this matter dealt with the right of an Owner to use his lot for personal use or for use by his guest. In May 2020, when Turner's Marina initiated this action, its rental policy provided an Owner had to give Turner's Marina at least thirty (30) days' advance notice to reserve its own Lot. (R. p. __ Day 9 p.63). Before the case went to trial, Turner's Marina modified its rental policy to reduce the time an Owner had to give notice of its planned usage of its Lot from thirty (30) days to forty-eight (48) hours. (R. p. __). Neil Turner testified, "[s]o it went from 30 days to 48 hours. And the reason we did that, we had multiple conversations with owners, the Association made the request, and as such, we adjusted it back to do so." (R. p. __ Tr. Day 9, p. 63, l. 7 – p. 66, l. 25). The 48-hour figure entered the case only because Turner's Marina itself adopted it. The Trial Court approved and adopted this policy, stating "… any lot owner may claim the use of their Lot, despite any existing reservation, up until **forty-eight (48) hours** prior to the guests' arrival, unless the RV Resort is sold out for the rental time period. The "lock out" period when a reservation may not be bumped by a Lot owner shall not be less than **forty-eight (48) hours**." (Emphasis in original) (R. p. ___ Or. p. 21).

While the Association agrees with the Trial Court's finding that a forty-eight (48) hour advance notice is reasonable, there is nothing in the Order restricting the ability of Turner's Marina to simply change the rental policy back to thirty (30) days, sixty (60) days, or even a year's advance notice. During the April 17, 2025 post-trial conference as to the proposed Order, Turner's Marina's counsel argued the lock out period should be thirty (30) days, quipping that having accepted 48 hours "we're just dickering over price. If 48 hours is permissible under the big scheme of things, then 30 days is permissible." (R. p. __ *Id.* pp. 109–110). In other words, Turner's Marina accepted the 48-hour owner-access window as a litigation position and announced, before the ink was dry, its intent to possibly stretch the lock out to thirty (30) days. The Association objected that "when they came into this, there was no restriction on when they could use their lots," and that while it would concede 48 hours, "anything above that is a taking" and the Trial Court instructed the parties to incorporate 48 hours into the Order. (R. p. __ Hr'g Tr. Apr. 17, 2025, p. 99, l. 13 – p. 101, l. 8; p. 112, l. 19 – p. 113, l. 21). As framed, the Owners' ability to claim their own property is merely Turner's Marina's "current policy," a policy Turner's Marina could purport to change tomorrow, inviting the next round of litigation. A declaration so framed adjudicates nothing. It records Turner's Marina's present practice rather than declaring the parties' rights, and it therefore leaves the underlying controversy, exactly where the parties began.

An Owner's right to use his own Lot does not derive from the Declarant's grace. This Court should resolve this issue based purely on the language of the Covenants. Article VII grants the Declarant its exclusive rental right only "in the absence of use by the owner" or the owner's registered guest. (R. p. __). The Owner's use of his own Lot is the Covenant baseline from which the Declarant's rental right is carved. Simply put, the Covenants place no advance-notice condition on an Owner's right to use his own Lot. The Association nonetheless accepted below, and accepts here, a forty-eight (48) hour window as a reasonable accommodation of reservations already confirmed. What it cannot accept is a declaration that leaves even that window to Turner's Marina's discretion.

The Association does not here challenge the existence of the Declarant's exclusive rental program. It asks only that the final decision on this matter declare rights rather than record a revocable practice. Having undertaken to define the parties' rights, the Trial Court was obliged to define them as rights, not as some type of additional benefit that could be changed at the whim of the holder of the rights under the Covenants. The Order should be modified to declare as a construction of Article VII, and of the position Turner's Marina itself adopted and litigated, that any Lot Owner may claim the use of his or her Lot, despite an existing reservation, up until forty-eight (48) hours prior to the Owner's or his guest's arrival, unless the Resort is sold out for the rental period. This issue should be remanded with instructions to the Trial Court that the "lock out" period shall not exceed forty-eight (48) hours before the guest's arrival, and that these are the

Owners' rights under the Covenants as construed by the Court, not terms of a flexible policy the Declarant may alter.

7. The Trial Court erred in denying the Association's Third Counterclaim for breach of fiduciary duty.

The Trial Court correctly held that the Covenants' exclusive rental program creates a fiduciary relationship between Turner's Marina and each Lot Owner "relating to Turner's Marina's rental of his/her Lot, the handling of rental monies relating to such rentals, and the conducting of an advertising program." (R. p. __ Final Order, pp. 22–23.) This is consistent with long-standing South Carolina law that holds a fiduciary relationship exists when one reposes special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one reposing confidence. *Hendricks v. Clemson Univ.*, 353 S.C. 449, 458, 578 S.E.2d 711, 715 (2003); *SSI Med. Servs., Inc. v. Cox*, 301 S.C. 493, 392 S.E.2d 789 (1990).

While finding a fiduciary duty existed, the Trial Court found "insufficient evidence" of breach of said duty. (R. p. __ Final Order, p. 23; R. p. ___). This conclusion of no breach of said duty is completely inconsistent with the Court simultaneously finding that Turner's Marina had been retaining 100% of the cancellation fees generated by reservations on Owners' Lots and ordering that such fees "are to be considered as a portion of the rental fees in the future and split with the Owner." (R. p. __ Final Order, p. 23; Hr'g Tr. Apr. 17, 2025, p. 117, ll. 14–19). Those findings cannot coexist. A fiduciary in the handling of rental monies that withholds from its beneficiaries their share of monies generated by their property has, by definition, breached the very duty found. The remedy is not merely prospective correction, but an accounting of the cancellation fees retained by Turner's Marina and restitution of the Owner's share.

Further, the fiduciary relationship the Covenants create is not confined to how the cancellation fees were handled. Turner's Marina operates an exclusive rental program over property it does not own, for beneficiaries who have no power to go elsewhere. Its duty of good faith and due regard for the Owners' interests extends to the conduct of that program, not merely to the arithmetic of remittance. *Hendricks*, 353 S.C. at 458, 578 S.E.2d at 715. The evidence at trial was clear as to at least two other breaches of fiduciary duty, other than retention of cancellation fees, discussed below.

The unrebutted evidence showed subordination of the Owners' interest in how the rental program was managed. § 8.1 of the Covenants contains Size Limits that were appropriate when the Resort was established, prohibiting RVs longer than thirty-five (35') feet or wider than eight (8') feet in their fully installed condition. (R. p. ____). John Bentley, who owned and operated Billybob, the then holder of the Declarant Rights, testified he did not enforce these Size Limits from 2006 until 2017, when he sold the Resort to Turner's Marina. Bentley testified that the newer, more modern RVs exceeded the 1981 size limitation (R. p. __ 4 37-39). When Turner's Marina acquired the Declarant Rights, it also did not enforce the Size Limits for its first thirty-three months of ownership (12/17/17 to 9/1/20) (R. p. __.) Thus, for a period of fourteen (14) consecutive years, the Size Limits were not enforced.

Four months after filed it filed this action on May 1, 2020, Turner's Marina began on September 1, 2022 to enforce the Size Limits, cancelling many confirmed reservations for "oversize" RVs, and refusing to book any such RVs in the future (R. p.___). It also refused to allow anyone who was a "full-time RV'er", (i.e. a person with no permanent address traveling the country in his or her RV) to make a reservation. (R. p. __) These dramatic changes in policy had a devastating impact on rentals at the Resort, as most of the modern RVs exceeded the archaic Size

Limits (R. p.____) and many individuals who rented spaces in RV parks had no permanent address, deciding to live permanently in their RV as they traveled throughout the country. (R. p. __).

Turner's Marina unilaterally restricted the rental program beginning in September 2020, to exclude two of the most popular classes of recreational vehicles, a restriction no predecessor had enforced, and that Turner's Marina itself had left dormant for its first thirty-three (33) months of ownership. (R. p. __ Tr. Day 9, p. 26, l. 22 – p. 29, l. 13). Neil Turner admitted that four times as many travel trailers are sold as fifth wheels, and eight times as many fifth wheels as motor homes — meaning the excluded classes constitute the overwhelming bulk of the current rental market. (R. p. __ Tr. Day 1, p. 67, l. 16 – p. 68, l. 3). Mr. Butch Puplava, the Resort's manager since 2006, testified that oversize rigs were "[a] large part of rental business, a large part of the families coming to the resort." (Tr. Day 2, p. 254, l. 4 – p. 255, l. 4; R. pp. ___–___.) He further testified that in seventeen years at the Resort, had never seen an Easter with vacancies — "Easter's usually, we're at 100 percent. There's usually a waiting list" — yet after September 2020 the Resort had "like 61, 65 empty lots." (Tr. Day 2, p. 255, ll. 5–14; R. p. ___.) He confirmed that reservations were cancelled from September 2020 forward. (Tr. Day 8, p. 54, l. 8 – p. 56, l. 24; R. pp. ___–___). Finally he o confirmed the Size Limits were not enforced until September 2020 and that when enforcement began, reservations already made were cancelled. (Tr. Day 8, p. 54, l. 8 – p. 56, l. 24;). John Bentley, who ran the Resort for Turner's Marina's predecessor, Billybob testified that 65 to 70 percent or more of rental revenue derived from oversized travel trailers and fifth wheels, that barring them "would have been devastating" to the rental program (Tr. Day 4, p. 41, ll. 12–25; p. 42, l. 7 – p. 43, l. 24, R. pp. ___–___), and that the rental income on the lot his family still owns declined after Turner's Marina began enforcement. (Tr. Day 4, p. 74, l. 6 – p. 75, l. 2 ; R. p. ___.).

Mr. Turner conceded that rental nights in 2022 remained below 2019 levels — "I can say yes to the 2022" — while attributing the decline principally to the opening of a competing resort. (Tr. Day 9, p. 32, l. 19 – p. 33, l. 9; R. pp. ___–___.) Mr. Turner's effort to point to a new competitor for the decline in rentals cannot survive the trial record's chronology. The collapse registered immediately upon the September 2020 enforcement campaign, long before any competing business would operate (Tr. p. __ 2. P. 255 lines 5-14, 8/p. 54, line 21 . 55, line 6). Turner's Marina also admitted, through its Rule 30(b)(6) testimony read at trial, that its office asks prospective renters whether they are "permanent RVers" with no permanent address and, if so, excludes them, "[p]er Section 8.1." (Tr. Day 5, p. 226, l. 10 – p. 227, l. 1; R. p. ___.). Turner's Marina admitted the reason he enforced the out-of-date Size Limits, although they had a devastating impact on rentals, was leverage in order to force the Association to agree to time restrictions on Owners using their RVs at the Resort (i.e. not living in RV full time). The Size Limit "was the only leverage that we had in order to enforce a time restriction and get these 70 people who are living permanently in there, out." (Hr'g Tr. Apr. 17, 2025, p. 35, ll. 3–21; *see also* Tr. Day 5, p. 216, ll. 5–17 ("if you take away the size limit, then you have to add a time limit"); R. pp. ___–___).

The Owners tried to remove the " leverage" being applied by Turner's Marina. On August 29, 2020, at a special meeting, the Owners approved an amendment to § 8.1 deleting the Size Limits. (D. Ex. 32; Tr. Day 4, p. 258, l. 13 – p. 259, l. 4; Tr. Day 9, p. 29, ll. 14–18; R. p. ___.) Under § 13.1 of the Covenants the amendment required the Declarant's approval. (R. p. ___ Cov. § 13.1.) Turner's Marina—having announced beforehand that it would "not approve any change to the covenants that does not address all the issues" (D. Ex. 32 (Aug. 24, 2020 letter to the Owners), Tr. Day 4, p. 259, ll. 13–19, admitted at p. 264, l. 1; R. p. ___)—refused, objecting to the electronic vote. When the Owners re-passed the amendment in person at the July 17, 2021 annual meeting, Turner's Marina refused again, on a new condition: it would not approve the change "unless we add a time restriction on the use of an owner's lot." (Tr. Day 3, p. 99, l. 7 – p. 100, l. 18 (Sibley); R. p. ___.) Neil Turner confirmed the condition from the stand: asked whether he was prepared to sign an amendment opening the Resort to larger units, he answered, "If there was a time restriction to address the integrity of the property, yes, sir." (Tr. Day 2, p. 96, ll. 9–24; see also Tr. Day 9, p. 29, ll. 19–20 ("you wouldn't sign it? A. No."); R. pp. ___.)

.While arguably Turner's Marina, as the Declarant, had the exclusive right under the Covenants to manage the rental program, it had a fiduciary duty to do so in good faith. A fiduciary that inflicts a demonstrated injury on its beneficiaries' rental income for the stated purpose of extracting from them a concession the prior judgments hold they need not give has not acted in good faith and with due regard to their interests. *Hendricks*, 353 S.C. at 458, 578 S.E.2d at 715. This was nothing more than a form of modern day extortion and is clearly strong evidence of the breach of fiduciary duty owed by Turner's Marina. The Trial Court committed error in failing to find such action was a breach of the fiduciary duty owed by Turner and to award appropriate damages. This issue should be remanded.

CONCLUSION

For the foregoing reasons, the Association respectfully requests that this Court: 1) find that the 10-Day Rule, the 48-Hour Rule, the No Storage Rule and the No Residency Rule are barred by *res judicata* and Collateral Estoppel and that an Owner can elect as its discretion to place its Lot in the rental program under the same principles; (2) in the alternative, reverse those portions of the Final Order imposing the 10-Day Rule, the 48-Hour Rule, the No Storage Rule and the No Residency Rule as wholly new provisions not allowed under the guise of contract construction.;

(3) remand the issue concerning Turner's Marina's rental policy allowing an Owner to reserve his Lot up to 48 hours before its usage , with instructions the 48 hour "lock out" period is binding on Turner's Marina; (4) reverse the denial of the Association's Third Counterclaim for breach of fiduciary duty and remand for an accounting and determination of appropriate relief ; (5) such other and further relief as this Court deems just and proper.

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Dated: September 4, 2026