

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Master-in-Equity

Appellate Case No. 2026-001870

James A. Leonard, III, Sheryl A. Leonard, Merrie P.
Grant, G. Duncan Grant, and Pamela K. Smith,

Petitioners,

v.

WildeWood Sections I-IV Homeowners Association, Inc.,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

Richard H. Willis (S.C. Bar No.: 6159)
John G. Tamasitis (S.C. Bar No.: 101875)
William P. DuBose, IV (S.C. Bar No. 105745)
Peyton R. Pratt (S.C. Bar No.107737)
WILLIAMS MULLEN
1230 Main Street, Suite 330
Columbia, SC 29201
(T): 803-567-4600

Attorneys for Respondent

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S.C. SUPREME COURT

QUESTIONS PRESENTED

1. Did the Court of Appeals properly hold that Petitioners' argument that even though the documents at issue had no seal visibly attached to them, the intent of the parties was to create sealed documents, was never raised before the Master-in-Equity?
2. Did the Court of Appeals properly affirm the Master-in-Equity's ruling that the three-year statute of limitations applied and barred Petitioners' claims?

STATEMENT OF THE CASE

I. PROCEDURAL BACKGROUND

On March 4, 2022, Petitioners James A. Leonard, III, Sheryl A. Leonard, Merrie P. Grant, G. Duncan Grant, and Pamela K. Smith (collectively, "Petitioners") filed their declaratory judgment action in the Richland County Court of Common Pleas, seeking a declaration from the court that: (i) a January 1998 assignment (the "Assignment") assigning the WildeWood Lot Restrictions referenced in Petitioners' deeds and chains of title to WildeWood Sections I-IV Homeowners Association, Inc. ("HOA" or "Respondent") is invalid; (ii) a February 1998 declaration amending the Declaration of Covenants, Conditions and Restrictions to the existing WildeWood Lot Restrictions (the "Amended Declarations") is invalid; (iii) the HOA lacks authority to adopt a resolution imposing a \$40 monthly Value Retention Assessment (the "Assessment"); and (iv) the HOA lacks authority to lien a homeowner's property for nonpayment of assessments ("Lien Authority") (R. pp. 16-20).

Respondent answered the Complaint on April 4, 2022, asserting, *inter alia*, that Petitioners' claims were time-barred by the applicable statute of limitations. (R. pp. 56-66). On October 19, 2022, the parties referred the case to the Honorable Joseph M. Strickland, Master-in-Equity for Richland County (R. pp. 12-13).

On November 10, 2023, Respondent moved for summary judgment on the grounds that Petitioners' claims were time-barred under S.C. Code Ann. §15-3-530(1) because Petitioners knew of the Assessment, Assignment, Amended Declarations, and Lien Authority more than three years prior to filing suit. (R. pp. 136-144). To support its motion, Respondent filed the affidavit of Gail Bragg—the HOA's president—along with supporting exhibits to the Master on April 18, 2024. (R. pp. 182-199). Petitioners failed to provide any responsive evidence to address the arguments raised in Respondents' motion, instead relying solely on the unverified allegations in their Complaint and an unfiled two-and-a-half-page memorandum of law that merely reiterated the allegations in their Complaint. Significantly, Petitioners' memorandum included only a single sentence addressing the applicability of the statute of limitations. (*See* R. pp. 180) ("This action was filed on March 4, 2022, well within any three year Statute of Limitations (assuming this statutory period applies. Because the Homeowners Association is attempting to enforce a sealed instrument, the twenty year statute may actually apply.)").

The Master heard oral arguments on Respondent's motion on April 18, 2024. During oral arguments, Petitioners' counsel presented arguments regarding the validity of the Assignment, Assessment, Amended Declarations, and Lien Authority, but did not present any argument addressing the applicable statute of limitations. (*See* R. pp. 67-111). Instead, Petitioners' counsel made a single, conclusory remark, that the Amended Declarations "are a sealed instrument, and so [the statute of limitations] would be 20 years." (R. p. 81).

By order dated November 1, 2024, the Master granted summary judgment and dismissed Petitioners' Complaint with prejudice. (R. pp. 1-11). In his order, the Master found that Petitioners' declaratory judgment action was barred by the three-year statute of limitations applicable to contracts, S.C. Code Ann. § 15-3-530(1). The Master further found that, "even if the documents

at issue were considered sealed instruments, the twenty-year statute of limitations would have run on challenging the validity of those documents anyway since they were executed on January 19, 1998, and February 23, 1998, respectively, and the running of the statute would have begun on the date of their execution.” (R. pp. 8 n. 3). Lastly, the Master found that Petitioners’ request for declaratory judgment regarding the HOA’s Lien Authority was moot because Respondent released the lien in question. Notice of entry of the Order was provided to the parties on November 1, 2024.

On December 2, 2024, Petitioners filed their Notice of Appeal in the Court of Appeals. On March 10, 2025, Petitioners filed their Initial Brief to the Court of Appeals. On appeal, Petitioners argued that (1) the master erred in ruling that a statute of limitations applied to an action in equity; (2) even if the action were an action at law, the master erred in ruling that a three-year statute of limitations applied; and (3) the master erred in finding the question regarding Respondents’ authority to place a lien to collect unpaid assessments was moot.

On July 7, 2026, the Court of Appeals issued its opinion affirming the Master’s grant of Respondent’s motion for summary judgment on Petitioners’ declaratory action and holding that (1) Petitioners did not preserve their “action in equity” or “mootness” arguments for appellate review, (2) Petitioners did not preserve their argument that even though the underlying documents did not have a seal visibly attached to them, the intent of the parties was to create sealed documents for appellate review, and (3) the Master did not err in finding that Petitioners’ claims were barred by the applicable three-year statute of limitations. *See Leonard v. Wildewood Sections I-IV Homeowners Ass’n Inc.*, No. 2024-002070, 2026 WL 1898724 (S.C. Ct. App. July 1, 2026). On August 24, 2026, Petitioners filed their Petition for Writ of Certiorari with the South Carolina Supreme Court.

II. FACTUAL BACKGROUND

A. History of the Value Retention Assessment.

In 2018, “The Members Club at Wood Creek and WildeWood, LLC,” the owner-operator of the Wood Creek and WildeWood golf courses and related amenities in and around the WildeWood neighborhoods, went out of business. First Citizens Bank initiated foreclosure proceedings, and both the Wood Creek and WildeWood properties were offered for foreclosure sale. To protect neighborhood property values, preserve the character of the WildeWood neighborhoods, and prevent the property from falling into disrepair, abandonment, or incompatible commercial or residential development, approximately fifty WildeWood residents (the “Investor Group”) approached the various WildeWood homeowners’ associations—including Respondent—with a proposal for the Investor Group to purchase and continue to operate the WildeWood property as a private country club, if the HOAs would agree to financially support the club through a monthly assessment to HOA members. (R. p. 19 at ¶¶ 22–23; p. 74, ln 5–22; pp. 195–197).

The Investor Group’s proposal provided that it would purchase, improve, and operate the foreclosed property as a private club, subject to a deed restriction obligating the Investor Group to operate the property solely as a private club and prohibiting the sale or other development of the property for a minimum period of 25 years. (R. p. 101, ln 1–22; pp. 195–197). Additionally, HOA members would receive limited rights to use certain club amenities—such as access to the club pool, golf, tennis, walking trails, food and beverage services and certain neighborhood social events—which were not previously benefits of their HOA membership. *Id.* In exchange for the deed restriction and the continued protection of the HOA members’ property values, a \$40 per month per HOA member assessment would be implemented, billed, and collected by the HOA and

paid to the new club (the “Value Retention Assessment” or “Assessment”). *Id.* While this offer was initially characterized as a “social membership,” HOA members were not required to become club members; they simply had limited rights (akin to a license) to use certain club amenities if they so chose. (R. p. 101, ln 1–22; p. 183 at ¶ 7).

Five participating WildeWood HOAs, including Respondent, overwhelmingly approved the Resolution through a duly noticed vote of a quorum of their members. Respondent’s vote occurred on November 27, 2018. (R. p. 75, ln 4–13; p. 183 at ¶ 9; pp. 195–199). Petitioners admit that they each received notice of the Resolution and the right to vote.¹ The Resolution was then filed with the Richland County Register of Deeds on January 10, 2019, and a deed restriction restricting the property to use as a private country club for 25 years was filed on October 16, 2019.² (R. p. 197; pp. 320–323).

B. Development of the WildeWood Community and Creation of the WildeWood Sections I-IV Homeowners’ Association, Inc.

Petitioners James and Sheryl Leonard (the “Leonards”) own 131 Running Fox Road (the “Leonard Property”). Petitioners Merrie and Duncan Grant (the “Grants”) own 55 Running Fox Road (the “Grant Property”). Petitioner Pamela Smith (a/k/a Pamela McFadden) owns 120 Duck Pond Road (the “Smith Property”). (R. pp. 16–18 at ¶¶ 2, 8, 13). All three parcels lie within the WildeWood neighborhood in Richland County and were originally owned—as were the other neighborhood lots—by the Manning Company, Heath Manning, and Donnie Boyd (the

¹ On February 1, 2023, Respondent served its First Set of Requests for Admission on Petitioners (R. pp. 173–178), and Petitioners did not respond. Thus, pursuant to Rule 36(a), SCRPC, the Master-in-Equity correctly deemed the Requests admitted.

² Here, and elsewhere within this Brief, Respondent cites to matters of public record. The Master-in-Equity correctly took judicial notice of these facts. *Philips v. Pitt Cnty. Mem. Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009) (finding courts “may properly take judicial notice of matters of public record”).

“Developers”), who subdivided and developed each section in turn. (R. p. 71, ln 14–p. 72, ln 6; p. 182 at ¶ 3).

When an original lot purchaser bought property from the Developers, their deed included restrictive covenants that ran with the land and expressly reserved the Developers’ right to alter and amend those restrictive covenants. (R. pp. 16–18 at ¶¶ 5, 7, 11, 17). As each section neared completion, the Developers transferred the rights to enforce and amend the restrictions to a homeowners’ association for that section. (R. p. 71, ln 14–p. 72, ln 6; p. 182 at ¶ 3). One such homeowners’ association was Olde WildeWood Homeowners Association, Inc. (“Olde Wildewood HOA”), which was formed in April of 1996. (R. pp. 314–323). In 1997, Olde Wildewood HOA changed its name to Wildewood Sections I-IV Homeowners Association, Inc. (“Respondent”) and amended their Bylaws (the “Bylaws”). (*Id.*)

For the first four sections (WildeWood Sections I, II, III and IV)—which included the Petitioners’ properties—the Developers assigned their rights to Respondent. (R. pp. 43–47). The Developers’ assignment to Respondent was memorialized in a writing titled “Assignment of Covenants, Conditions and Restrictions Affecting Lots in Sections I, II, III, and IV of the WildeWood Subdivision,” dated January 19, 1998, and recorded with the Richland County Register of Deeds on January 26, 1998 (the “Assignment”). (R. p. 18 at ¶ 19; pp. 43–47; p. 182 at ¶ 3). This Assignment was proper because it was based on the restrictions, covenants, and conditions contained in each deed from the Developers to the original lot purchasers. On February 23, 1998, Respondent, pursuant to its Bylaws, approved an Amended Declaration of Covenants, Conditions and Restrictions (the “Amended Declarations”) as an amendment to the WildeWood Lot Restrictions, which was recorded on March 26, 1998. (R. p. 17 at ¶ 12; p. 182 at ¶ 3; pp. 200–211).

C. Petitioners' Acquisition of their Properties and Participation in the HOA.

The Leonards, Petitioner Merrie Grant, and Petitioner Pamela Smith³ purchased their properties in 1985, 1994, and 2001, respectively. (R. pp. 17–18 at ¶¶ 6, 12, 18; pp. 146–158, 162–172). In 2013, Ms. Grant subsequently conveyed the Grant Property to herself and her husband, Petitioner Duncan Grant, as joint tenants with a right of survivorship. (R. p. 17 at ¶ 12; pp. 159–161). Each of the Petitioners' deeds, or the deeds in their chains of title, indicated that their purchases were subject to certain covenants, conditions and restrictions that are appurtenant to and ran with the land and which the Developers reserved the right to alter, amend or release for their benefit.

Each of the Petitioners have participated to varying degrees in the HOA since its formation in 1996, or in Ms. Smith's case, since she purchased her property in 2001. Petitioners have either acquiesced to the HOA's formation or, in Ms. Smith's case, chosen to purchase property within the HOA. The Petitioners have voted in HOA elections and on various amendments to the HOA's bylaws and covenants, paid HOA assessments (excluding the Value Retention Assessment), availed themselves of statutes designed to protect members of homeowners' associations, voiced complaints to the HOA Board, and benefited from the enforcement of the HOA's rules. (R. pp. 182–183 at ¶¶ 4–5, 184–192, 195–197). At no time prior to the initiation of this lawsuit did Petitioners inform the HOA that they did not consider themselves to be members of the HOA or not bound by the restrictive covenants applicable to their respective properties. (R. p. 183 at ¶ 6).

³ In November 2003, Petitioner Smith conveyed a one-half interest in her property to Douglas McFadden via quitclaim deed. In October 2012, pursuant to a divorce decree, Douglas McFadden reconveyed his interest back to Petitioner Smith via quitclaim deed. (R. p. 18 at ¶ 18; pp. 165–172).

ARGUMENT

I. THE COURT OF APPEALS PROPERLY HELD THAT PETITIONERS DID NOT PRESERVE THE ISSUE OF WHETHER PARTIES TO THE UNDERLYING DOCUMENTS INTENDED TO CREATE SEALED INSTRUMENTS.

It is “axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.” *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998); *see also Doe v. Doe*, 370 S.C. 206, 212, 634 S.E.2d 51, 55 (Ct. App. 2006) (“[W]hen an appellant neither raises an issue at trial nor through a Rule 59(e), SCRCP, motion, the issue is not preserved for appellate review.”). While “[a] party need not use the exact name of a legal doctrine in order to preserve [an argument], . . . it must be clear that the argument has been presented on that ground.” *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003); *Wilder Corp.*, 330 S.C. at 76, 497 S.E.2d at 733 (“[A]n objection must be sufficiently specific to inform the trial court of the point being urged by the objector.”). An issue is not preserved when a party makes only a vague or fleeting reference to it before the trial court, preventing the trial court from understanding the nature of the issue to adequately rule on the it. *See State v. Morales*, 439 S.C. 600, 609, 889 S.E.2d 551, 556 (2023) (holding defendant failed to preserve the issue of the correct admissibility standard when defendant only mentioned the case providing the correct standard at trial but failed to object to the standard utilized by the State).

As held by the South Carolina Court of Appeals, Petitioners never raised before the Master-in-Equity the specific issue of whether the parties to the Assignment, Amended Declarations, or the relevant deeds intended for those documents to be sealed instruments despite no visible seals being attached to them. Petitioners did not raise this issue in its two-and-a-half page, unfiled

memorandum in opposition to Respondent’s motion for summary judgment, nor did they raise the issue during the subsequent hearing on that motion.

All Petitioners can cite to support their preservation argument is a comment, made in passing by Petitioners’ counsel during the hearing on Respondent’s motion for summary judgment, that Petitioners “disagree that the 20—that three-year statute applies, but the restrictive covenants are a sealed instrument, and so it would be 20 years.” (ROA, p. 81, II. 7-9).⁴ Petitioners made no other argument—in fact, no other reference—during the hearing regarding the documents at issue being “sealed instruments.”⁵ Moreover, this bare, unsupported assertion—that the underlying documents *are* sealed instruments—is a far cry from the detailed “intent” argument Petitioners later raised on appeal and now press in their Petition before this Court to justify the application of a twenty-year statute of limitations.

Excepting the conclusory statements in Petitioners’ unfiled memorandum and during the parties’ motions hearing, Petitioners offered no argument or evidence to the Master-in-Equity that the documents at issue were sealed or were intended to be. In fact, the Master expressly notes in its Order granting Respondents’ motion for summary judgment that,

⁴ Petitioners point to the section in Respondent’s final brief to the Court of Appeals arguing against the application of a twenty-year statute of limitations to support their position that Petitioners preserved their “intent to seal” argument for appeal. Respondents’ alternative arguments raised in briefing, however, have no bearing on this preservation issue. Because Petitioners failed to raise (or even mention) the “intent to seal” argument before the Master-in-Equity, this issue has not been preserved for appellate review and should be disregarded by this Court.

⁵ In Petitioners’ unfiled Memorandum Opposing Motion for Summary Judgment, they made a singular, unsupported statement that because the documents at issue were sealed instruments, they “may” be subject to a twenty year statute of limitations. (*See* R. pp. 180) (“This action was filed on March 4, 2022, well within any three year Statute of Limitations (assuming this statutory period applies. Because the Homeowners Association is attempting to enforce a sealed instrument, the twenty year statute may actually apply).”). Petitioners offered no argument to support its conclusion that the documents at issue are “sealed instruments,” nor did Petitioners allude in any way to the “intent to seal” argument they presented for the first time on appeal. Consequently, Petitioners cannot now rely on this statement to support their preservation argument.

Plaintiffs' counsel suggested, but did not argue, that the applicable statute of limitation for the issues presented was 20 years, pursuant to S.C. Code Ann. § 15-3-520(b), because the recordation of the assignment to the HOA and restrictive covenants constitute sealed instruments for the purposes of the statute. Plaintiffs are incorrect. Plaintiffs presented no evidence that the documents at issue were sealed, so as to be subject to the 20-year statute of limitation.

(ROA, p. 7, pp. 7-8, n.3) (emphasis added).⁶ Further, the record lacks any reference or suggestion of the specific “intent to seal” argument Petitioners raised on appeal and reassert in their Petition.

Petitioners did not cite any supporting authority or argue in any other manner before the Master-in-Equity the issue of whether the parties to the documents at issue intended to create sealed instruments. Consequently, because this issue was never raised before the trial court, Respondent had no opportunity to challenge the issue and/or provide its counterarguments. Put differently, Petitioners never provided the Master a fair opportunity to rule on this issue and, thus, the Master did not rule on the issue. *See Morales*, 439 S.C. at 609, 889 S.E.2d at 556 (“One primary purpose of our issue preservation rules is to ‘give the trial court a fair opportunity to rule.’ A trial court's opportunity to rule necessarily includes both parties being aware of the nature of the objection such that they may present their best arguments addressing *that* objection. This then serves another purpose of our rules—‘meaningful appellate review.’”) (quoting *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012)).

Petitioners cannot now benefit from their own failure to prepare and present their case before the trial court by relying on arguments that were never presented to or ruled on by the Master-in-Equity. *See I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716,

⁶ In its Petition, Petitioners mischaracterize the trial court's Order by stating that “[the lower court] also acknowledged . . . that Petitioners did, in fact argue that the twenty-year, sealed instrument statute of limitations applied.” In fact, the trial court expressly found that Petitioners did not argue this issue. (See ROA, p. 7, pp. 7-8, n. 3) (“Plaintiffs’ counsel suggested, but did not argue, that the applicable statute of limitation for the issues presented was 20 years.”).

724 (2000) (“The [preservation] requirement also serves as a keen incentive for a party to prepare a case thoroughly. It prevents a party from keeping an ace card up his sleeve—intentionally or by chance—in the hope that an appellate court will accept that ace card and, via a reversal, give him another opportunity to prove his case.”); *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003) (“A party may not argue one ground at trial and an alternate ground on appeal.”); *Dunes W. Golf Club, LLC v. Town of Mount Pleasant*, 401 S.C. 280, 303, 737 S.E.2d 601, 613 n. 11 (2013) (holding appellant’s argument was procedurally inappropriate when appellant argued a different position for the first time on appeal). Accordingly, because Petitioners failed to raise the issue as to whether the parties to the Assignment, Amended Declarations, or the relevant deeds intended to create sealed instruments, this argument is not properly before this Court and should be disregarded. *See Dunbar*, 356 S.C. at 142, 587 S.E.2d at 694 (holding that an issue that is not persevered for review should not be addressed by the appellate courts).

II. THE COURT OF APPEALS PROPERLY AFFIRMED THE TRIAL COURT’S RULING THAT PETITIONERS’ CLAIMS WERE TIME-BARRED.

A. The Master-in-Equity’s Grant of Respondent’s Motion for Summary Judgment Should Be Affirmed Based on the Master’s Unappealed Finding That, Even If The Twenty-Year Statute of Limitations Applies, Petitioners’ Claims are Still Time-Barred.

“[W]here a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case.” *Jones v. Lott*, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010), *abrogated on other grounds by Repko v. Cnty. of Georgetown*, 424 S.C. 494, 818 S.E.2d 743 (2018); *Atl. Coast Builders & Contractors, LLC*, 398 S.C. at 329, 730 S.E.2d at 285 (“[A]n unappealed ruling, right or wrong, is the law of the case.”); *Buckner v. Preferred Mut. Ins. Co.*, 255 S.C. 159, 160, 177 S.E.2d 544, 544 (1970) (“The appellant excepted to the court’s first conclusion, but has not

excepted to its second ground of decision nor argued against it in the brief. Therefore, the finding below . . . right or wrong, is the law of this case and requires affirmance.”); *In re Timmerman*, 331 S.C. 455, 460, 502 S.E.2d 920, 922 (Ct. App. 1998) (“When a party receives an order that grants certain relief not previously contemplated or presented to the trial court, the aggrieved party must move, pursuant to Rule 59(e), SCRCF, to alter or amend the judgment in order to preserve the issue for appeal.”); *Hall v. Clarendon Outdoor Advertising, Inc.*, 311 S.C. 185, 188 428 S.E.2d 1, 2 (Ct.App.1993) (holding that the failure to argue against the basis for a trial court's ruling renders it the law of the case).

While Petitioners appealed the Master-in-Equity’s finding that Petitioners’ claims were time barred by the applicable three-year statute of limitations, Petitioners’ briefs before the Court of Appeals omit any discussion of the following finding by the Master:

Notably, even if the documents at issue were considered “sealed instruments,” the statute of limitations would have run on challenging the validity of [the Assignment and Amended Declarations] anyway since they were executed on January 19, 1998, and February 23, 1998, respectively, and the running of the statute would have begun on the date of their execution.

(R. 7-8, n. 3). This finding by the Master-in-Equity—that even if the Assignment and Amended Declarations were “sealed instruments,” Petitioners’ claims are still barred under the twenty-year statute of limitations—provides an independent basis for the trial court’s ruling that Petitioners’ claims were time-barred and its subsequent grant of Respondent’s motion for summary judgment.

Petitioners did not move to alter or amend the Master’s Order pursuant to Rule 59(e), SCRCF, to challenge the Master’s alternative basis for relief and/or to argue that a twenty-year statute of limitations would not have barred Petitioners’ claims. Consequently, as firmly

established under South Carolina law, Petitioners could not—and did not⁷—argue against the Master’s alternative ground for relief on appeal.⁸ *See In re Timmerman*, 331 S.C. at 460, 502 S.E.2d at 922 (“When a party receives an order that grants certain relief not previously contemplated or presented to the trial court, the aggrieved party must move, pursuant to Rule 59(e), . . . to alter or amend the judgment in order to preserve the issue for appeal.”).

Thus, because Petitioners failed to address or challenge the Master’s finding before either the Master or the Court of Appeals, the trial court’s finding that Petitioners’ claims are also barred under the twenty-year statute of limitations —whether right or wrong—is the law of this case and provides an alternative basis for the Master-in-Equity to support its grant of Respondent’s motion for summary judgment. *See Atl. Coast Builders & Contractors, LLC*, 398 S.C. at 329, 730 S.E.2d at 285 (“[A]n unappealed ruling, right or wrong, is the law of the case.”); *Godfrey v. Heller*, 311 S.C. 516, 521, 429 S.E.2d 859, 862 (Ct. App. 1993) (“[W]e would affirm the ruling that, to avoid unjust enrichment to Heller, Godfrey is entitled to some undetermined interest, as we are bound by this unappealed ruling.”). Consequently, this Court should decline to grant Petitioners’ writ and leave in place the affirmation of the Master-in-Equity’s grant of Respondents’ motion for summary judgment.

⁷ Petitioners did not challenge the Master’s finding on appeal. It was not enumerated in Petitioners’ Notice of Appeal, nor was it addressed in Petitioners’ briefing to the Court of Appeals. This argument was addressed, however, in Respondent’s Final Brief. (*See* Resp’t Final Br. II.C.).

⁸ For similar reasons, the Court of Appeals held that Petitioners’ argument that “the master erred in finding the question regarding [Respondent’s] authority to place a lien to collect unpaid assessments was moot” was not preserved for appellate review because “the master considered mootness for the first time in its order and [Petitioners] failed to file a motion pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure to argue the issue was not moot or that a mootness exception applied.”

B. Petitioners Failed to Preserve the Issue of Whether the Twenty-Year Statute of Limitations Applied; Therefore, the Master-in-Equity’s Grant of Summary Judgment Was Properly Affirmed by the Court of Appeals.

As noted above, appellate courts may not address an issue unless it was both raised to and ruled upon by the trial court. *Chastain v. Hiltabidle*, 381 S.C. 508, 673 S.E.2d 826 (Ct. App. 2009) (citing *Lucas v. Rawl Family Ltd. P’ship.*, 359 S.C. 505, 598 S.E.2d 712 (2004)). Petitioners recognize that “there is no clear indication” that any of the underlying documents “have physical seals affixed to them.” (Pet. Writ Certiorari p. 16). Thus, Petitioners’ only grounds for asserting that the twenty-year statute of limitations applies rests entirely on their argument that, under S.C. Code Ann. §19-1-160, indicia in the documents at issue indicates the parties’ intent to create sealed instruments. (Pet. Writ Certiorari p. 17) (“Nevertheless, the lack of an affixed seal is not dispositive of the issue of whether these documents constitute sealed instruments. For, if there are other indicia that the parties intended to create a sealed instrument, the twenty-year statute would still be applicable.”). However, as recognized by the Court of Appeals and discussed in more detail above, Petitioners never raised—or even mentioned—their “intent to seal” argument before the Master-in-Equity.

In framing their second argument, Petitioners mischaracterize the Master’s ruling by suggesting that the court found that the general three-year statute of limitations for breach of contract claims applied instead of the twenty-year statute of limitations for sealed instruments. However, while the Master-in-Equity did rule that Petitioners’ claims were subject to the three-year statute of limitations, it did not rule on whether the twenty-year statute of limitations for sealed instruments should apply because, as the Master noted, Petitioners “presented no evidence that the documents at issue were sealed, so as to be subject to the 20-year statute of limitation.” (R. p. 7 n. 3); see *Wilder Corp.*, 330 S.C. at 76, 497 S.E.2d at 734 (noting that an issue must be

specific enough to allow the trial judge to understand and rule upon that issue). Because Petitioners first developed on appeal their argument that the twenty-year statute of limitations for sealed instruments should apply to the underlying documents, this argument is unpreserved and cannot be the basis for reversing the Master-in-Equity's ruling. *See Cox v. S.C. Educ. Lottery Comm'n*, 441 S.C. 209, 218, 893 S.E.2d 342, 347 (Ct. App. 2023).

C. Even If Preserved, Petitioners' Argument Fails on the Merits.

i. The Master-in-Equity Correctly Ruled That a Three Year, not Twenty Year, Statute of Limitations is Appropriate.

Petitioners acknowledge that their “primary purpose in bringing this action was to challenge the validity of Respondent’s authority to enact the [Value Retention Assessment] voted on in November 2018.” (Appellant Br. at 14). As discussed above, the Assessment was enacted via resolution and amendment to Respondent’s Bylaws, with a vote duly noticed to all HOA members on November 12, 2018. (R. pp. 195–197).⁹

Restrictive covenants in governing documents of a homeowners’ association are “contractual in nature and bind the parties to the covenants in the same manner as other contracts.” *First Fed. Sav. & Loan Ass’n of Charleston v. Bailey*, 316 S.C. 350, 354, 450 S.E.2d 77, 79 (Ct. App. 1994). Here, the Assessment was adopted by resolution, embodied in an amendment to Respondent’s Bylaws, and recorded in the public records, and, therefore, the Assessment covenant is deemed contractual. Because restrictive covenants “are construed like contracts,” the principles of contract interpretation apply in determining their validity and enforceability. *See Snow v. Smith*, 416 S.C. 72, 88, 784 S.E.2d 242, 250 (Ct. App. 2016). Thus, the Assessment covenant must be

⁹ Petitioners do not argue, nor could they, that the Assessment or any documents related to the 2018 resolution are sealed instruments within the meaning of S.C. Code Ann. § 15-3-520(b).

analyzed under familiar contract principles—another indication that this dispute is primarily upon a contract.

A homeowners’ association has a contractual right to charge and lien an owner’s property where the underlying covenants so provide. *See Bailey*, 316 S.C. at 354, 450 S.E.2d at 79 (“We agree . . . that [homeowners’ association’s] contractual right to charge and lien on the subject property did not emanate from [mortgagors], but rather was already burdened with the covenant at the time the mortgagors received title to it.”). Respondent’s authority to impose the Assessment springs directly from the Resolution approved by vote in November 2018 and recorded January 2019. The authority to lien for nonpayment springs from the Amended Declarations recorded in 1998. These enforcement rights are no different than any other contractual remedy for breach. Accordingly, Petitioners’ action challenging Respondent’s contractual authority to impose the Assessment sounds in contract and is subject to the three-year statute of limitations in S.C. Code Ann. § 15-3-530(1). The twenty-year statute of limitations for sealed instruments, § 15-3-520(b), should not apply.

To persuade this Court to apply a twenty-year statute of limitations, Petitioners argue that their challenge to Respondent’s authority to adopt the Assessment requires a court to determine the validity of the underlying 1998 Assignment and Amended Declarations (arguably, both “sealed instruments”) and, therefore, this is “an action upon a sealed instrument” under § 15-3-520(b). (Appellant Final Br. at 15–18). However, Petitioners do not seek to enforce any rights based upon, nor do they request interpretation of, the Assignment or the Amended Declarations. Their rights to bring this suit do not arise from those documents. At best, the Assignment and the Amended Declarations are evidence relevant to whether Respondent’s 2018 Assessment is lawful. Thus, Petitioners’ Complaint does not assert “an action upon a sealed instrument” under § 15-3-520, and

the Master correctly applied the three-year statute of limitations. *See, e.g., Wilson v. Jayma*, No. 2017-002223, 2021 WL 4449623, at *3 (Ct. App. Sept. 29, 2021) (finding that because the crux of the plaintiff’s action was not to assert a right based on a sealed document, Plaintiff’s action did not assert “an action upon a sealed instrument” within the meaning of § 15-3-520).

A statute of limitations “begins to run when a party knows or should know, through the exercise of due diligence, that a cause of action might exist.” *Anonymous Taxpayer*, 377 S.C. 425, 439, 661 S.E.2d 73, 80 (2008). The test for whether a plaintiff knew or should have known a cause of action might exist is “objective rather than subjective,” *Holly Woods Ass’n of Residence Owners v. Hiller*, 392 S.C. 172, 183-84, 708 S.E.2d 787, 793 (Ct. App. 2011), and the court must determine “whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist.” *Young v. S.C. Dep’t of Corrs.*, 333 S.C. 714, 719, 511 S.E.2d 413, 416 (Ct. App. 1999).

Petitioners filed this action on March 4, 2022. Notice of the meeting and vote on the Resolution authorizing the Assessment was provided to each member, including Petitioners. A quorum of HOA members approved the Assessment by an overwhelming vote on November 27, 2018, with the Leonards voting “no” by proxy and the Grants and Petitioner Smith not voting. (R. p. 75, ln 4–13; pp. 195–197). Therefore, Petitioners were on notice in November of 2018 that “some right of [theirs] ha[d] been invaded, or that some claim against [the HOA] might exist.” *Young*, 333 S.C. at 719, 511 S.E.2d at 416.

To attempt to extend time to preserve their claims, Petitioners cite the Resolution’s language: “[t]his resolution is expressly conditioned on the golf course and related property being purchased by the WildeWood Investor Group.” (Appellant Br. at 17; R. p. 197). They argue that because the Investor Group did not close on the purchase of the property until September 2019,

the Resolution was not “effective,” and their claims were not “actionable,” until then—pushing the three-year statute of limitations period to September 2022. But their arguments misstate well-established South Carolina law and statute.

The South Carolina Homeowners Association Act S.C. Code Ann. §§ 27-30-110, *et seq.*) makes clear that “[r]ules, regulations, and amendments to rules and regulations . . . are effective upon passage or adoption.” S.C. Code Ann. § 27-30-130(B)(1)(A). Thus, the Resolution became effective on November 27, 2018—the date it was adopted—and the three-year statute of limitations therefore expired on November 27, 2021. As explained above, a statute of limitations begins to run when a plaintiff knew or should have known a cause of action might exist, not when a claim becomes “actionable.” *See Anonymous Taxpayer*, 377 S.C. at 439, 661 S.E.2d at 80; *Hiller*, 392 S.C. at 183-84, 708 S.E.2d at 793; *Young*, 333 S.C. at 719, 511 S.E.2d at 416. Because HOA rules amendments are effective upon adoption, Petitioners could have challenged the Resolution before the Investor Group completed its purchase. Accordingly, their attempt to re-set the three-year period lacks support under South Carolina law.

ii. Even If The Twenty-Year Statute of Limitations Applies, Petitioners’ Action is Still Time-Barred.

The Developers of the first four WildeWood sections—in which Petitioners’ properties are located—assigned their rights to Respondent on January 19, 1998 (i.e., the Assignment). (R. p. 18 at ¶ 19; pp. 43–47; p. 182 at ¶ 3). On February 23, 1998, Respondent adopted the Amended Declarations, amending the WildeWood Lot Restrictions. (R. p. 17 at ¶ 12; p. 182 at ¶ 3).

Petitioners Leonard, Petitioner Merrie Grant, and Petitioner Smith purchased their properties in 1985, 1994, and 2001, respectively. (R. pp. 17–18 at ¶¶ 6, 12, 18; pp. 146–158, 162–172). In 2013, Petitioner Grant conveyed the Grant Property to herself and her husband, Petitioner Duncan Grant, as joint tenants with a right of survivorship. (R. p. 17 at ¶ 12; pp. 159–161). Each

Petitioner is charged with the knowledge of the restrictions recorded in their deeds and chains of title when they acquired their properties. *See Harbison Cmty. Ass’n, Inc v. Mueller*, 319 S.C. 99, 103, 459 S.E.2d 860, 863 (Ct. App. 1995) (“A homeowner is charged with constructive notice of any restriction properly recorded within the chain of title.”).

The Leonards and Grants each owned their properties at the time of the January 1998 Assignment and the February 1998 Amended Declarations, and each had notice of the Respondent’s formation in 1996 as the Olde Wildewood HOA and subsequent name change in 1997. (R. pp. 314–319). Consequently, any claim regarding the Assignment or Amended Declarations by the Grants or Leonards became time-barred in February 2018 (if the twenty-year statute is applicable), over three years before this action was filed. Petitioner Smith, who purchased her property in 2001, is charged with actual and constructive notice of the Assignment and Amended Declarations at that time. Accordingly, her twenty-year statute of limitations, if applicable, expired at the latest in 2021, over a year before this action was filed.

The HOA’s existence and actions over the past twenty-eight years comes as no surprise to Petitioners. The Leonards and Grants were on notice of their right to challenge the Assignment to the HOA upon its creation, and for many years thereafter, yet they did not do so. Similarly, Petitioner Smith took no action when she purchased her property in 2001. The Petitioners acquiesced to the formation of the HOA, voted in elections and on various amendments to the covenants, availed themselves of statutes designed to protect HOA members¹⁰, voiced complaints to the HOA Board, paid HOA dues for many years, and benefited from enforcement of the covenants and architectural guidelines. All were on notice that they could have challenged the

¹⁰ On November 26, 2018, Petitioner Smith filed a complaint with the South Carolina Department of Consumer Affairs, alleging the actions taken by the HOA were not compliant with the HOA’s Bylaws. (R. p. 82, ln. 11–16; pp. 140–141; pp. 278–284).

validity of the January 1998 and February 1998 Assignment and Amended Declarations for over twenty years before filing their Complaint in March 2022. They cannot now claim ignorance to avoid the statute of limitations.

Thus, even if a twenty-year statute of limitations applies, Petitioners' claims are time-barred, and the Master properly dismissed their case.

CONCLUSION

For the reasons set forth above, and any others appearing in the Record on Appeal and/or the parties' associated briefing, this Court should deny Petitioners' writ and leave in place the Court of Appeals' unanimous holding affirming the Master-in-Equity's grant of Respondent's motion for summary judgment on Petitioners' declaratory judgment action. The Master-in-Equity properly found that Petitioners' claims were barred by the applicable three-year statute of limitations for actions on contracts. Though Petitioners argue on appeal that a twenty-year statute of limitations applies because the parties to the underlying documents intended to create sealed instruments, Petitioners never raised this intent argument—its only basis for the application of the twenty-year statute of limitations—before the Master-in-Equity. Petitioners cannot now benefit from their failure to persevere their “intent to seal” argument for this Court's consideration in an effort to relitigate their case on appeal. Finally, Petitioners' arguments are futile. Petitioners failed to challenge the Master's alternative ruling—that Petitioners' claims are barred even if the twenty-year statute of limitations applied—in a post-trial motion or on appeal; therefore, this finding is the law of the case and provides an independent basis for this Court to leave in place the Master's grant of summary judgment.

Petitioners have been on notice of Respondent's existence and authority for over two decades, yet they waited until March of 2022 to challenge the 1998 Assignment, the 1998

Amended Declarations, and the 2018 Value Retention Assessment. As such, whether a three-year or a twenty-year statute of limitations applies, Petitioners claims are still time-barred, and the Master's grant of summary judgment was properly affirmed.

Respectfully submitted,

s/ John G. Tamasitis
Richard H. Willis (S.C. Bar No.: 6159)
rwillis@williamsmullen.com
John G. Tamasitis (S.C. Bar No. 101875)
jtamasitis@williamsmullen.com
William P. DuBose, IV (S.C. Bar No. 105745)
wdubose@williamsmullen.com
Peyton R. Pratt (S.C. Bar No. 107737)
ppratt@williamsmullen.com
WILLIAMS MULLEN
1230 Main Street, Suite 330
Columbia, SC 29201
(T): 803-567-4600

Attorneys for Respondent

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Columbia, South Carolina