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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

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2026-000690
Case No. 2024-CP-07-00156

Queens Grant Regime, II, Inc.,
Horizontal Property Regime, Respondent,

v.

Greenwood Resorts and Communities,
Inc., d/b/a Palmetto Dunes Resort and Appellants.
Callaway Brands, Inc., d/b/a
TopTracer Golf,

RESPONDENT'S INITIAL BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	3
STATEMENT OF ISSUES ON APPEAL.....	5
STATEMENT OF THE CASE	6
STANDARD OF REVIEW	11
ARGUMENT	13
I. The Controversy Is Live and This Court Should Decide These Issues.....	13
II. The Trial Court Acted Within Its Discretion in Granting Temporary Injunctive Relief	15
A. Likelihood of Success: The Trespass Is Admitted - Only Its Volume Is Disputed.....	15
B. Irreparable Harm and the Inadequacy of Damages	16
C. “Balancing the Equities” Is Not Reversible Error.....	18
D. Appellants Contest the Weight of the Evidence, Not Its Existence	19
III. The Trial Court Acted Within Its Discretion as to the Rule 65(c) Bond	20
A. The Remedy for an Inadequate Bond Is a Limited Remand, Not Reversal	20
B. The Amount Was Supported - and Appellants' Figures Require Correction	21
C. The Trial Court Did What This Court Directed on Remand.....	23
D. The Language Appellants Isolate Does Not Establish an Error of Law.....	23
IV. The Trial Court Did Not Abuse Its Discretion in Proceeding on the Amended Motion	25
V. Conclusion	27

TABLE OF AUTHORITIES

CASES

<i>AJG Holdings, LLC v. Dunn</i> , 382 S.C. 43, 674 S.E.2d 505 (Ct. App. 2009)	18, 19, 20, 24, 27
<i>Atwood Agency v. Black</i> , 374 S.C. 68, 646 S.E.2d 882 (2007)	21, 22, 24
<i>Byrd v. Irmo High Sch.</i> , 321 S.C. 426, 468 S.E.2d 861 (1996)	14
<i>Carter v. Lake City Baseball Club, Inc.</i> , 218 S.C. 255, 62 S.E.2d 470 (1950)	17
<i>City of Columbia v. Pic-A-Flick Video, Inc.</i> , 340 S.C. 278, 531 S.E.2d 518 (2000)	11
<i>Columbia Broad. Sys., Inc. v. Custom Recording Co.</i> , 258 S.C. 465, 189 S.E.2d 305 (1972)	18
<i>Compton v. S.C. Dep't of Corr.</i> , 392 S.C. 361, 709 S.E.2d 639 (2011)	15, 19
<i>Curtis v. State</i> , 345 S.C. 557, 549 S.E.2d 591 (2001)	13
<i>Gunter's Island Hunting Club v. Hucks</i> , 282 S.C. 124, 317 S.E.2d 470 (Ct. App. 1984)	17
<i>Helsel v. City of N. Myrtle Beach</i> , 307 S.C. 29, 413 S.E.2d 824 (1992)	12
<i>I'On, L.L.C. v. Town of Mt. Pleasant</i> , 338 S.C. 406, 526 S.E.2d 716 (2000)	13
<i>LeFurgy v. Long Cove Club Owners Ass'n, Inc.</i> , 313 S.C. 555, 443 S.E.2d 577 (Ct. App. 1994)	16
<i>Martin v. Paradise Cove Marina, Inc.</i> , 348 S.C. 379, 559 S.E.2d 348 (Ct. App. 2001)	22
<i>Mathis v. S.C. State Highway Dep't</i> , 260 S.C. 344, 195 S.E.2d 713 (1973)	13
<i>Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.</i> , 387 S.C. 583, 694 S.E.2d 15 (2010)	18, 19
<i>Reiland v. Southland Equip. Serv., Inc.</i> , 330 S.C. 617, 500 S.E.2d 145 (Ct. App. 1998)	26
<i>Richland Cnty. v. S.C. Dep't of Revenue</i> , 422 S.C. 292, 811 S.E.2d 758 (2018)	12, 20
<i>Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.</i> , 361 S.C. 117, 603 S.E.2d 905 (2004)	12, 15
<i>Shaw v. Coleman</i> , 373 S.C. 485, 645 S.E.2d 252 (Ct. App. 2007)	17
<i>Strategic Res. Co. v. BCS Life Ins. Co.</i> , 367 S.C. 540, 627 S.E.2d 687 (2006)	12
<i>Townes Assocs., Ltd. v. City of Greenville</i> , 266 S.C. 81, 221 S.E.2d 773 (1976)	12
<i>United States v. W.T. Grant Co.</i> , 345 U.S. 629 (1953)	15
<i>Wilder Corp. v. Wilke</i> , 330 S.C. 71, 497 S.E.2d 731 (1998)	25
<i>Williams v. Bordon's, Inc.</i> , 274 S.C. 275, 262 S.E.2d 881 (1980)	19

RULES

Rule 6(d), SCRCP	26
Rule 62, SCRCP	13, 23
Rule 65(a), SCRCP	26
Rule 65(c), SCRCP	10, 21, 22, 24, 27
Rule 65(e), SCRCP	25
Rule 208(b)(2), SCACR.....	6
Rule 220(c), SCACR.....	13
Rule 241(d)(1), SCACR.....	10

STATEMENT OF ISSUES ON APPEAL

- I. SHOULD THIS COURT DECIDE THE ISSUES PRESENTED, WHERE THE CONTROVERSY REMAINS LIVE, THE TRIAL COURT'S ORDERS CONTINUE TO GOVERN THE CASE, AND THE ISSUES ARE IN ANY EVENT CAPABLE OF REPETITION YET EVADING REVIEW?
- II. DID THE TRIAL COURT ACT WITHIN ITS DISCRETION IN GRANTING TEMPORARY INJUNCTIVE RELIEF, WHERE THE RECORD ESTABLISHED A CONTINUING TRESPASS OF GOLF BALLS ONTO RESPONDENT'S RESIDENTIAL PROPERTY, A DOCUMENTED RISK OF SERIOUS BODILY INJURY, AND NO ADEQUATE REMEDY AT LAW?
- III. DID THE TRIAL COURT ACT WITHIN ITS DISCRETION UNDER RULE 65(C), SCRPC, IN SETTING A \$75,000 BOND AND IN RECONSIDERING THAT AMOUNT ON REMAND AS THIS COURT DIRECTED?
- IV. IF THE BOND WERE INADEQUATE, IS THE REMEDY A LIMITED REMAND TO RESET IT RATHER THAN REVERSAL OF THE TEMPORARY INJUNCTION?
- V. HAVE APPELLANTS PRESERVED, AND CAN THEY SHOW PREJUDICE FROM, THEIR OBJECTION TO THE TRIAL COURT PROCEEDING ON RESPONDENT'S AMENDED MOTION - AN AMENDMENT MADE TO CURE A DEFECT APPELLANTS THEMSELVES RAISED?

STATEMENT OF THE CASE

Respondent disagrees with Appellants' Statement of the Case, which omits the evidence on which the trial court relied and the events that followed entry of the Orders under review. Rule 208(b)(2), SCACR.

A. The Change in Appellants' Operations.

Respondent Queens Grant Regime, II, Inc., Horizontal Property Regime ("Queens Grant") is a horizontal property regime at 45 Queens Folly Road, Hilton Head Island. Its members own and occupy residences immediately adjacent to a driving range operated by Appellants at the Palmetto Dunes Resort. (Compl. ¶¶ 1, 6; R.p. ____.) For decades the range was a traditional practice facility ancillary to Appellants' golf courses. In 2021, Appellants converted it into a TopTracer entertainment venue serving food and alcohol. The conversion drew a larger and less skilled clientele, and the volume of golf balls leaving the range and landing inside Queens Grant increased sharply. (Compl. ¶¶ 8, 10-12; R.p. ____.)

B. The Trespass and the Danger Continued - and Appellants Admitted It.

Appellants assert that "any property damage claimed by Respondent occurred prior to June 2024." (Appellants' Br. 11.) The record refutes that, and Appellants' own counsel refuted it in open court.

Lt. Col. Andy Lundgren, USMC (Ret.), a Queens Grant resident, has kept a contemporaneous, date-and-time-specific log of errant golf balls entering the regime, supported by photographs. His Second Affidavit states: "Since the hearing in June of 2024, my home has been hit multiple times," and itemizes strikes on July 21, August 23,

September 7, October 4 (twice), October 5, December 26, and December 27, 2024 (twice). On August 17, 2024, a ball "came over the net and narrowly missed hitting me and my dog by less than 2 feet." (2/26/2025 Second Lundgren Aff. ¶ 3 and Ex. A; R.p. ____.)

At the hearing on June 20, 2025, Appellants' counsel put the figures on the record himself. In 2021, of approximately six million balls hit, "there were 11,000 balls that went over the net" - "20 plus a day." As of that hearing, "year to date, 1,234 balls have gone over the net, which is on average three per day." Counsel added: "we know that that's not being a good neighbor." (Tr. of 6/20/2025 Hr'g 19:10-25; R.p. ____.) Appellants have thus conceded that their operation deposits roughly three golf balls per day onto their neighbor's land.

Respondent submitted the affidavit of Michael Johnstone, a licensed architect since 1975 and a practicing golf course architect since 1985, who has participated in more than three hundred forensic investigations of errant golf shot issues - roughly sixty percent for defendants - and inspected this site on September 9, 2024. (2/26/2025 Johnstone Aff. ¶¶ 2-3, 5; R.p. ____.) His opinion:

The current condition between the TopTracer driving range and bar, and the Queens Grant HPR II residential community is extremely dangerous. It is clearly foreseeable that with known frequency and speed of shots landing outside the range will result in continued property damage and can also cause a serious personal injury such as blindness, traumatic brain injury or even death.

(Id. ¶ 7.) He further opined that "[t]his danger is preventable to a high degree if a 130[-foot] net is properly installed" - the netting the trial court later found Appellants "unable or unwilling" to install. (Id. ¶ 8; 2/13/2026 Order 2.) Appellants offered no contrary

expert. On March 28, 2026, Lt. Col. Lundgren was struck in the shoulder by an errant ball while working in his garden. (4/1/2026 Supp. Lundgren Aff.; R.p. ____.) This is the record Appellants describe as showing no continuing harm.

C. The Trial Court's Restraint, and Its Warnings.

Queens Grant filed suit on January 23, 2024 and moved for temporary relief the next day. The trial court did not act summarily. It continued the motion by consent for mediation, held December 20, 2024 and ended in impasse; required thirty-, sixty-, and ninety-day status reporting; conducted multiple hearings; and repeatedly asked Appellants for alternatives. (Compl.; 1/24/2024 Mtn.; 6/20/2024 Order; Tr. of 6/20/2025 Hr'g 9:23-10:8; R.p. ____.) Nearly two years elapsed before relief was granted.

Appellants were told plainly, seven months before the injunction issued, what the problem was. Responding to counsel's argument that the data "ha[d] changed substantially," the court said: "The problem is, it ain't changed all the way. It's still dangerous." It called the reduction "commendable" and "good," then added: "At the same time, the risk is still there. It's unacceptable." (Tr. of 6/20/2025 Hr'g 46:17-47:6.) And later:

[E]verything I heard you tell me all day long, is avoidance of coming to the realization that you got a problem, that you created a dangerous condition out there. . . . [Y]ou got a dangerous condition even if it's down to 1,000 balls or whatever. It's still dangerous. It's still dangerous, and I don't know how else to tell you that.

(Id. 48:10-22.) The court was equally clear it had no wish to close a business: "obviously, you can't put an ongoing business out of business." (Id. 48:23-25.) Appellants did make modifications - netting, mats, and balls, at a stated cost of roughly \$400,000 -

which reduced the intrusions but did not stop them. (6/19/2025 Second Franseen Aff. ¶ 4; Tr. 46:12-13.)

D. The Amended Motion Cured a Defect Appellants Themselves Raised.

Respondent's motion was amended on December 9, 2025. The amendment states on its face why: "Defendants challenged the original motion as being made under Rule 65(a) and not 65(b). Plaintiff hereby amends its motion to encompass the entirety of Rule 65." (12/9/2025 Am. Mtn. 1; R.p. ____.) The relief requested did not change - an order "enjoining, restraining and prohibiting the Defendants from further trespassing, damaging, and endangering the property and members of the Plaintiff." (Id.) Respondent expressly disclaimed any request to "suspend the general and ordinary business of the Defendants" and proposed ten tailored alternatives short of suspension, including higher netting in the hot zones, reorienting the tee boxes, restricting the bays nearest Queens Grant to shorter clubs, and a per-ball fine system. (Id. at 1, 6-7.) The hearing proceeded on December 12, 2025.

E. The Injunction, the Bond, and the Remand.

On February 13, 2026, the trial court found that Respondent had made "a prima facie showing that Defendants' operation of the TopTracer driving range has resulted in ongoing unlawful trespass onto Plaintiff's property, damage to homes and vehicles, and an unreasonable risk of physical injury," and further found "irreparable harm for which there is no adequate remedy at law." (2/13/2026 Order 1.) The relief was narrow: only ball-hitting was suspended, for sixty days; food and beverage service and all other activities

continued; Appellants could apply "at any time" to reopen upon submitting an operations plan; and a hearing was set at the close of the period to consider modification. (Id. at 3.) The bond was set at \$75,000. (Id. at 4.)

Respondent posted the bond on March 20, 2026, and the court amended the Order on March 30 to provide that the sixty-day period would "commence upon the filing of the required Rule 65(c) bond." (3/30/2026 Am. Order 2-3.) Appellants petitioned this Court directly for supersedeas without first applying below. This Court remanded under Rule 241(d)(1), SCACR, directing the trial court to "reconsider the amount of the bond in light of the ongoing nature of the injunction." (4/3/2026 Order.)

The trial court held the expedited hearing on April 10, 2026, where Appellants appeared through counsel and a corporate representative and presented the Third Franseen Affidavit and their full financial case. Its April 14 Form 4 Order ruled:

THE COURT FINDS THE AMOUNT OF BOND IS APPROPRIATE, BUT SPECIFICALLY FINDS THAT IT IS LIMITED TO THE 60 DAYS OF THE TEMPORARY RESTRAINING ORDER. IF THE INJUNCTION IS CONTINUED AN ADDITIONAL BOND MAY BE REQUIRED.

(4/14/2026 Form 4 Order 1.) The formal Order of April 22 found the \$75,000 "more than sufficient to cover any potential actual loss (even at the gross revenue number)," expressly found it "is not 'low or nominal' but is appropriate," and confirmed the court's continuing availability under Rule 62, SCRCP. (4/22/2026 Order 12-13.) This Court denied supersedeas on April 30, 2026.

F. Appellants Waited Out the Suspension and Resumed.

Appellants never submitted the Operations Plan both Orders required. They never applied to reopen on a plan, though permitted to apply "at any time." They did not accept the court's offer to "entertain test periods." They did not answer Respondent's May 21, 2026 inquiry about compliance. (8/6/2026 Mtn. to Reinstate ¶¶ 3, 5.)

They waited. The suspension expired May 19, 2026, and on July 7, 2026 Appellants resumed full ball-hitting operations. The barrage resumed with them. Between July 7 and August 4, 2026 - less than one month - Lt. Col. Lundgren documented no fewer than ninety-two (92) errant golf balls on Queens Grant property. On July 11 a ball "slammed onto a neighboring unit (Unit 541), ricocheted off the neighbor's wall, and came to rest on the patio deck." On July 31 at 11:05 a.m. a ball "slammed onto my roof, startling everyone inside." On August 3 a ball struck his patio, and at 8:05 p.m. "a second ball crashed onto my roof with great force." His conclusion: "In essence, we are back where we started." (8/6/2026 Supp. Lundgren Aff. ¶¶ 3-7) Respondent moved on August 6, 2026 to reinstate the suspension and for sanctions. That motion is pending; no hearing has been held.

STANDARD OF REVIEW

Appellants invoke the deferential standard: "The granting of temporary injunctive relief is within the sound discretion of the trial court and will not [be] overturned absent an abuse of that discretion," which occurs only where the court was controlled by an error of law or where its order rests on factual conclusions without evidentiary support. *City of Columbia v. Pic-A-Flick Video, Inc.*, 340 S.C. 278, 531 S.E.2d 518 (2000); accord

Strategic Res. Co. v. BCS Life Ins. Co., 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006); *Richland Cnty. v. S.C. Dep't of Revenue*, 422 S.C. 292, 309, 811 S.E.2d 758, 767 (2018).

Respondent accepts that standard and does not shrink from a broader one. An injunction is equitable relief, and our Supreme Court's most recent extended treatment of a granted preliminary injunction states the appellate standard in equitable terms and in no other: "Upon review of an action in equity, this Court may make factual findings based on its own view of the preponderance of the evidence." *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004) (citing *Townes Assocs., Ltd. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976)). The phrase "abuse of discretion" appears nowhere in *Scratch Golf*.

The result does not turn on which formulation governs. Under the deferential standard, the trial court's findings are amply supported. Under the equitable standard, Respondent welcomes review of the preponderance, because this record runs one direction only: Appellants have never denied that their operation deposits golf balls on their neighbor's land, their counsel quantified it at roughly three per day, Respondent's expert called the resulting condition "extremely dangerous," a resident has been struck, and Appellants offered no contrary expert and no evidence that the intrusions have ceased or can be made safe short of the netting they declined to install.

Two principles frame the review. A temporary injunction adjudicates nothing: it "is made without prejudice to the rights of either party pending a hearing on the merits." *Helsel v. City of N. Myrtle Beach*, 307 S.C. 29, 32, 413 S.E.2d 824, 826 (1992). And this Court "may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the

Record on Appeal." Rule 220(c), SCACR; *see I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000).

ARGUMENT

I. THE CONTROVERSY IS LIVE AND THIS COURT SHOULD DECIDE THESE ISSUES.

Respondent asks this Court to reach the merits. A case becomes moot only "when judgment, if rendered, will have no practical legal effect upon [the] existing controversy," that is, "when some event occurs making it impossible for [the] reviewing Court to grant effectual relief." *Curtis v. State*, 345 S.C. 557, 549 S.E.2d 591 (2001) (quoting *Mathis v. S.C. State Highway Dep't*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973)). This case is not in that posture.

The Orders under review remain operative and continue to govern the litigation. They direct Appellants to produce an Operations Plan - a directive Appellants have not satisfied. They fix the security on deposit with the Clerk of Court, against which Appellants assert a right to recover. They reserve to the trial court continuing authority under Rule 62, SCRCF, over "the duration of the suspension, the scope of permitted operations, the approval of any proposed operational plan, [and] the amount of the bond." (3/30/2026 Am. Order 5.) There has been no final judgment. And Respondent's August 6, 2026 Motion to Reinstate is pending, unheard, and will be governed by the very Orders Appellants ask this Court to set aside. A decision here will therefore have immediate practical effect: if the Orders are reversed the trial court must begin again; if affirmed it proceeds on the pending motion with this Court's guidance on both the elements and the bond.

Appellants cannot create mootness by electing not to comply, waiting for the term to run, and then resuming the enjoined conduct. Even if the running of the sixty-day term were thought to moot the challenge, the issues are plainly "capable of repetition, yet evading review." *Byrd v. Irmo High Sch.*, 321 S.C. 426, 468 S.E.2d 861 (1996). In *Byrd*, our Supreme Court adopted the "less restrictive approach" to the exception, holding that jurisdiction exists whenever "the issue raised is capable of repetition but evading review," without any requirement of "a reasonable expectation that the same complaining party be subjected to the action again." *Id.* Applying that standard to a ten-day suspension already served, the Court observed that such orders "by their very nature, are completed long before an appellate court can review the issues they implicate." *Id.*

The same is true, *a fortiori*, of a sixty-day suspension of business operations. The February 13 Order was entered, amended, appealed, made the subject of a petition for supersedeas, remanded, re-heard, ruled upon again, renewed in this Court, and denied - all before the sixty days ran. If a sixty-day injunction cannot be reviewed after it expires, it cannot be reviewed at all. Nor is repetition speculative; it has already occurred and continues to.

Finally, a party's voluntary cessation of challenged conduct does not moot a controversy, and *a fortiori* a party's resumption of enjoined conduct cannot. Respondent has located no South Carolina decision stating the rule in those terms, but the reasoning of the leading federal authority is persuasive and applicable: "voluntary cessation of allegedly illegal conduct does not deprive the tribunal of power to hear and determine the case"; "the court's power to grant injunctive relief survives discontinuance of the illegal conduct"; and

the relevant considerations include "the *bona fides* of the expressed intent to comply, the effectiveness of the discontinuance and, in some cases, the character of the past violations." *United States v. W.T. Grant Co.*, 345 U.S. 629, 632-33 (1953). Appellants expressed no intent to comply; their discontinuance was effective only while compelled, and ended the moment the compulsion did.

II. THE TRIAL COURT ACTED WITHIN ITS DISCRETION IN GRANTING TEMPORARY INJUNCTIVE RELIEF.

A party seeking a preliminary injunction must establish "(1) he will suffer immediate, irreparable harm without the injunction; (2) he has a likelihood of success on the merits; and (3) he has no adequate remedy at law." *Compton v. S.C. Dep't of Corr.*, 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011); *accord Scratch Golf*, 361 S.C. at 121, 603 S.E.2d at 908. The trial court found each element, and the record supports each finding.

A. Likelihood of Success: The Trespass Is Admitted - Only Its Volume Is Disputed.

Appellants have never denied that golf balls driven from their range cross the property line and land inside Queens Grant. Their defense is that they now trespass less often than they used to. Their counsel quantified it: 11,000 balls over the net in 2021, "20 plus a day"; and, as of June 2025, "1,234 balls . . . on average three per day," which counsel conceded was "not being a good neighbor." (Tr. of 6/20/2025 Hr'g 19:10-25.)

An eighty percent reduction in a continuing trespass is still a continuing trespass. Appellants cite no authority - and there is none - for the proposition that a defendant

establishes a right to keep sending projectiles onto a neighbor's land by showing that it does so less often. Over three balls a day is roughly 1,100 trespasses a year. Respondent's likelihood of success was not merely a "fair question"; it was supplied by the defense. The same record supports the nuisance theory: "If a lawful business is operated in an unlawful or unreasonable manner so as to produce material injury or great annoyance to others or unreasonably interferes with the lawful use and enjoyment of the property of others, it will constitute a nuisance." *LeFurgy v. Long Cove Club Owners Ass'n, Inc.*, 313 S.C. 555, 558, 443 S.E.2d 577, 579 (Ct. App. 1994). The trial court's finding that Appellants were "operating a lawful business in an unlawful manner" tracks that standard precisely. (2/13/2026 Order 2.)

B. Irreparable Harm and the Inadequacy of Damages.

The harm is not lost money. It is a recurring physical intrusion by high-velocity projectiles into the yards, patios, and walkways of a residential community, and the resulting inability of residents to occupy their own property in safety. Respondent's expert - a golf course architect of forty years' standing who has conducted more than three hundred forensic investigations, most for defendants - described the condition as "extremely dangerous" and the risk of "blindness, traumatic brain injury or even death" as "clearly foreseeable." (2/26/2025 Johnstone Aff. ¶ 7.) Appellants offered no expert to the contrary. Resident have been struck, have had windows broken and have had siding damaged.

South Carolina has enjoined this kind of harm for seventy-five years. In *Carter v. Lake City Baseball Club, Inc.*, our Supreme Court held:

While it is undoubtedly the correct rule that a court of equity will not interfere by injunction in cases of nuisances, trespasses, and like injuries to property when the parties can have complete redress in a court of law, still if it appears that irreparable mischief will be done by withholding the process, or where the damages that will result to the complainants are incapable of being adequately measured, or where the mischief is such, from its continuous and permanent character, that it must occasion constantly recurring grievances, which cannot be otherwise prevented, a court of equity ought to interfere by injunction to stay the wrong and protect the complainants' property and personal rights from hurt or destruction.

218 S.C. 255, 271-72, 62 S.E.2d 470, 477 (1950). *Carter*, like this case, involved balls leaving a recreational facility and landing on neighboring property; its rule has been applied ever since. *Gunter's Island Hunting Club v. Hucks*, 282 S.C. 124, 317 S.E.2d 470 (Ct. App. 1984) ("Continuous trespass will be enjoined by a court of equity." (citing *Carter*)). This Court applied the same principle in *Shaw v. Coleman*, holding that although an injunction would "inconvenience Coleman by preventing him from maintaining his shooting range," "the safety benefits to the Shaws and the Snowdens outweigh the inconvenience suffered by Coleman." 373 S.C. 485, 498, 645 S.E.2d 252, 259 (Ct. App. 2007). Appellants answer that *Carter* and *Shaw* involved permanent injunctions. That distinction cuts against them: if this danger supports a *permanent* injunction after trial, it plainly supports a *sixty-day* suspension pending trial, entered on a lesser showing and secured by a bond.

Nor are damages adequate. This Court has held that neither criminal enforcement nor money damages is an adequate remedy for intrusions of this kind, affirming a preliminary injunction on precisely that footing. *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 52, 674 S.E.2d 505, 509-10 (Ct. App. 2009) ("criminal law resolutions and an award of

monetary damages [were] . . . inadequate remedies for intrusions on Respondents' property rights"); *see also Columbia Broad. Sys., Inc. v. Custom Recording Co.*, 258 S.C. 465, 477-78, 189 S.E.2d 305 (1972) (uncertainty in fixing the measure of damages may itself justify equitable jurisdiction). The trial court cited that page of *AJG Holdings* in the first paragraph of its findings. (2/13/2026 Order 1.) To leave Respondent to its action at law is to require its members to sue, repeatedly and indefinitely, for each new intrusion and each new near miss - the multiplicity of actions equity exists to prevent. Appellants' answer below was that Respondent "brought a claim for property damage. We can resolve that." (Tr. of 6/20/2025 Hr'g 48:3-5.) But the claim is not confined to broken siding and broken windows; it is that residents cannot use their patios and gardens without standing in a zone of danger. A check does not repair that, and it will recur tomorrow.

C. "Balancing the Equities" Is Not Reversible Error.

Appellants' only claimed legal error in the grant of the injunction is the trial court's sentence that "[i]n balancing the equities, the Court finds that temporary injunctive relief is warranted." (2/13/2026 Order 2.) That does not require reversal.

First, Poynter does not hold what Appellants say. The Supreme Court "clarif[ied] that there is no separate requirement that a judge perform such a balancing before deciding to issue a preliminary injunction." *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 694 S.E.2d 15 (2010) (emphasis added). *Poynter* removed a fourth element from the plaintiff's burden of proof. It did not forbid a court of equity from observing that the equities favor the moving party, and it did not make such an observation reversible

error. Appellants read a rule of proof as a rule of prohibited vocabulary. It bears noting that *Poynter* expressly modified *AJG Holdings* and *Levine* "to the extent they include a separate 'balancing the equities' requirement" - both cases Appellants themselves rely upon.

Second, the trial court found each of the three *Compton* elements independently, in terms, and on evidence. (2/13/2026 Order 1-2.) The phrase Appellants isolate did not substitute for the required findings; it followed them. *Third*, Appellants must show prejudice, not merely error, and cannot explain how the outcome would have differed had the sentence been omitted. *Cf. Williams v. Bordon's, Inc.*, 274 S.C. 275, 262 S.E.2d 881 (1980) (discretionary ruling not disturbed absent an abuse of discretion "to the prejudice of appellant").

D. Appellants Contest the Weight of the Evidence, Not Its Existence.

Appellants argue that the trial court "assumed" the harm was continuing and failed to credit their remedial measures. Both fail on the record. The court had before it Respondent's expert affidavit, the Lundgren logs documenting strikes on the Lundgren residence in July, August, September, October, and December 2024 and intrusions continuing through September 2025, and evidence of a resident struck in March 2026. It also had Appellants' evidence of their remedial measures - and engaged with it directly, calling the reduction "commendable" and "good," then explaining why it was not enough: "the risk is still there. It's unacceptable"; "you got a dangerous condition even if it's down to 1,000 balls or whatever." (Tr. of 6/20/2025 Hr'g 46:25-47:6, 48:16-19.) The Orders then found Appellants "unable or unwilling" to install adequate netting and that "to date,

Defendants have not demonstrated that they can operate the driving range without continuing trespass, property damage, and danger." (2/13/2026 Order 1-2.) That is not a failure to exercise discretion. It is the exercise of discretion, on the evidence, against Appellants.

Nor was the relief broader than necessary. *See Richland Cnty.*, 422 S.C. at 309-10, 811 S.E.2d at 767. The court enjoined one activity - hitting golf balls - while permitting food, beverage, and all other operations to continue; limited the suspension to sixty days; invited Appellants to apply "at any time" to reopen on a plan; offered to "entertain test periods"; and set a hearing at the close of the period. (2/13/2026 Order 3; 4/22/2026 Order 13.) Respondent itself had proposed ten alternatives short of suspension. (12/9/2025 Am. Mtn. 6-7.) Appellants held the key to their own relief throughout. They never submitted a plan, never applied to reopen, and never asked for a test period.

III. THE TRIAL COURT ACTED WITHIN ITS DISCRETION AS TO THE RULE 65(c) BOND.

A. The Remedy for an Inadequate Bond Is a Limited Remand, Not Reversal.

Appellants' bond argument, if accepted in full, does not produce the relief they seek. *AJG Holdings* is directly on point. There the trial court required *no* bond at all. This Court held that error - and remedied it by "revers[ing] the circuit court's order failing to require Respondents to post a bond, and remand[ing] for findings in accordance with this opinion." 382 S.C. 43, 50, 674 S.E.2d 505, 508 (Ct. App. 2009). The injunction itself was affirmed.

If the complete absence of a bond warrants only a remand to set one, the alleged insufficiency of a \$75,000 bond cannot warrant dissolution of the injunction.

Atwood Agency v. Black is not to the contrary, and Appellants' characterization of it should be corrected. Appellants tell this Court that "[t]he Court reversed the order entering the injunction and setting the bond." (Appellants' Br. 14.) The Supreme Court reversed in *Atwood* because the enjoined information was "readily ascertainable from other sources" and therefore not a trade secret - a merits holding. Having found the appellants "improperly enjoined," the Court remanded "to the circuit court to award the appropriate amount of costs and damages incurred as a result of the temporary injunction." 374 S.C. 68, 73, 646 S.E.2d 882, 884 (2007). The remand was to *award damages* to a party already adjudged wrongfully enjoined, not to reset a bond, and the reversal did not turn on the bond. *Atwood* supplies no authority for dissolving an injunction because a bond was too small.

B. The Amount Was Supported - and Appellants' Figures Require Correction.

Rule 65(c), SCRCPP, requires security "in such sum as the court deems proper." The rule fixes no formula; it requires an amount sufficient to protect the enjoined party "in the event the injunction is ultimately deemed improper." *Atwood*, 374 S.C. at 73, 646 S.E.2d at 884. The trial court found from Appellants' own affidavits that range revenue averaged \$967 per day over two years, or approximately \$58,020 for sixty days. (4/22/2026 Order 12.) A bond exceeding the entire gross revenue of the suspended operation for the period of suspension is not "nominal" in any sense the law recognizes. *Compare Atwood*, 374 S.C. at 71, 646 S.E.2d at 883 (\$250).

The figures Appellants present to this Court require correction. Appellants say they "expected to lose \$121,461.00 in revenue from the Range in the first sixty days of the injunction," citing paragraph 7 of the Third Franseen Affidavit. (Appellants' Br. 17.) What paragraph 7 says is that between March 20 and May 20, 2025 the Range generated "a total of \$121,461.00 in revenue, **including \$27,386.00 in range fees and range balls and \$94,075.00 in food and beverage sales.**" (4/20/2026 Third Franseen Aff. ¶ 7 (emphasis added).) The injunction expressly permitted food and beverage operations to continue. (2/13/2026 Order 3.) The revenue actually enjoined was therefore \$27,386 - roughly twenty-two percent of the figure Appellants place before this Court. **The \$75,000 bond is nearly three times the gross revenue of the activity the trial court suspended.**

Appellants' remaining \$325,043.67 is not a loss at all. By the affidavit's own terms it is the arithmetic consequence of a discount Appellants were "considering" - reducing green fees at their golf courses "from \$300 a round to \$250" - calculated "even when assuming no golfers cancel based on the Range being closed." (Id. ¶ 14.) A voluntary, hypothetical price reduction at an unenjoined facility, premised on no lost customers, is not a cost or damage "incurred or suffered" by a party "wrongfully enjoined or restrained." Rule 65(c), SCRCF. Recovery on an injunction bond is "limited to costs and damages incurred during the period of the temporary restraining order or temporary injunction." *Martin v. Paradise Cove Marina, Inc.*, 348 S.C. 379, 559 S.E.2d 348 (Ct. App. 2001). The golf courses were never enjoined and are not mentioned in the Orders. The balance of Appellants' evidence is of the same character: \$9,948 in cancelled reservations over thirteen

days, and a decline in the Range's online rating from 5.0 stars across sixty-six reviews to 4.2 across six. (Id. ¶¶ 5, 15.)

Appellants also invoke the trial court's remark at the June 2025 hearing that "a bond is not going to be cheap." (Tr. 51:3-13; Appellants' Br. 5.) A preliminary observation made seven months before the court received any financial evidence is not a finding, and a court does not bind itself to a number it has not yet been given a basis to select. When the evidence arrived, it showed \$27,386 of enjoined revenue.

C. The Trial Court Did What This Court Directed on Remand.

This Court directed the trial court to "reconsider the amount of the bond in light of the ongoing nature of the injunction." (4/3/2026 Order.) The trial court held an expedited hearing within seven days, took evidence, reconsidered the amount, and answered this Court's concern in terms: the bond "IS LIMITED TO THE 60 DAYS" and "IF THE INJUNCTION IS CONTINUED AN ADDITIONAL BOND MAY BE REQUIRED." (4/14/2026 Form 4 Order 1.) The formal Order confirmed that the court "remains available pursuant to Rule 62 SCRCF to address any aspect of this injunction including the bond," and expressly found the bond "is not 'low or nominal' but is appropriate under the present circumstances." (4/22/2026 Order 13.) The premise of Appellants' Issue II - that the sixty-day period was extended without consideration of whether the bond should increase - was true when this Court remanded and untrue by the time Appellants filed this brief.

D. The Language Appellants Isolate Does Not Establish an Error of Law.

Appellants build their argument on two sentences: that "the economic impact of compliance is not a 'wrongful injunction damage' but a consequence of bringing operations into conformity with the law," and that the likelihood of compensable damages was "minimal." Read as a categorical holding that an enjoined party can never recover, those sentences would be in tension with *Atwood*. But that is not what the Orders do. In the same section the trial court stated the correct rule: "the bond serves the narrow purpose of protecting the enjoined party against damages proximately caused by the injunction itself," and "is not intended to punish the party seeking injunctive relief, nor is it a proxy for alleged damages arising from the underlying dispute." (2/13/2026 Order 4.) The court then applied that rule and found the likelihood and magnitude of compensable loss limited - a factual assessment of the kind Rule 65(c) requires.

Decisive, in any event, is the amount actually set. Rule 65(c) is satisfied or violated by the sum, not by the adjectives used to describe it. On remand the court expressly disclaimed the "low or nominal" characterization, reconsidered the figure on the evidence, and set security at nearly three times the gross revenue of the enjoined activity. There is no basis to find that sum improper - and if there were, the remedy would be a remand. *AJG Holdings*, 382 S.C. at 50, 674 S.E.2d at 508. As to the court's reference to Respondent's ability to pay, Appellants assert that no authority permits its consideration; neither is there authority forbidding it. Rule 65(c) directs the court to fix "such sum as the court deems proper," and the amount here was independently supported by Appellants' own revenue evidence in any event.

IV. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN PROCEEDING ON THE AMENDED MOTION.

Appellants' final issue is that they received only three days' notice that Respondent's long-pending motion had been relabeled. The argument fails at every step.

Preservation. An issue "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). Appellants describe an objection at the December 12, 2025 hearing but identify no motion for a continuance and no ruling denying one. Their own issue statement - whether the court erred "in refusing to continue the hearing" - presupposes a motion the record must show.

Invited error. The Amended Motion states on its face why it was filed: "Defendants challenged the original motion as being made under Rule 65(a) and not 65(b). Plaintiff hereby amends its motion to encompass the entirety of Rule 65." (12/9/2025 Am. Mtn. 1.) Appellants objected that the motion invoked the wrong subsection; Respondent cured the objection; Appellants now ask this Court to reverse because the cure came too soon after their complaint. A party may not complain on appeal of a step taken at its own request. Their reliance on Rule 65(e), SCRCP, makes the point again: that rule provides that no *temporary restraining order* may issue to suspend the ordinary business of a corporation, and that such relief "may be suspended only by injunction after notice." The amendment did exactly what Rule 65(e) contemplates.

Notice. Rule 65(a) requires notice, and Appellants had it - from January 24, 2024, twenty-three months, that Respondent sought an order stopping golf balls from entering Queens Grant, by suspension if necessary. The relief sought never changed; only its label did. The parties mediated over that relief, submitted status reports about it, and argued it at multiple hearings, including the full-day hearing of June 20, 2025 at which the court said it was "going to do something." (Tr. 10:4-5.) Rule 6(d), SCRCP, requires ten days' notice "unless a different period is fixed by these rules or by an order of the court," committing the period to the trial court's control. The court considered and rejected this precise argument, finding Appellants "have had more than ample notice through multiple hearings of the type of relief sought by the Plaintiffs, but more importantly, the type of relief this Court would be forced to order if they failed to implement effective measures." (4/22/2026 Order 10.)

No abuse of discretion and no prejudice. "A motion for continuance lies within the trial court's sound discretion, and its ruling will not be reversed without a clear showing of abuse"; "[t]o justify a continuance, the moving party must show not only the absence of some material evidence but also due diligence on his part to obtain it." *Reiland v. Southland Equip. Serv., Inc.*, 330 S.C. 617, 500 S.E.2d 145 (Ct. App. 1998). Appellants made neither showing and identify, even now, no specific evidence they were unable to obtain; their brief says only that "additional information" "would have been obtained and presented." (Appellants' Br. 20-21.) Prejudice is affirmatively refuted by what followed: Appellants had already submitted the Second Franseen Affidavit and its Ball Flight Data in June 2025, and on April 10, 2026 they received a full expedited evidentiary hearing at which they

presented the Third Franseen Affidavit and their complete financial case. Any deficiency in the December notice was cured months before this brief was filed.

V. CONCLUSION

The trial court presided over this case for two years before it acted. It ordered mediation, required status reports, held repeated hearings, asked Appellants again and again for constructive alternatives, and told them plainly that the condition they had created was "still dangerous." When it finally acted, it suspended one activity for sixty days, left the rest of Appellants' business running, invited them to apply for relief at any time upon presenting a plan, offered test periods, and required security nearly three times the gross revenue of the activity it suspended. When this Court remanded, it held an expedited hearing within seven days and reconsidered the bond exactly as directed, limiting it to the sixty-day term and reserving the right to require more.

Appellants submitted no plan, made no application to reopen, requested no test period, and answered no inquiry. They waited out the sixty days and resumed. Within twenty-eight days, ninety-two errant golf balls were documented on Respondent's property. The residents of Queens Grant are, in Lt. Col. Lundgren's words, "back where we started." Respondent respectfully requests that this Court reach the merits and affirm the trial court's Orders in all respects. If the Court concludes the Rule 65(c) bond requires further attention, the appropriate disposition is a limited remand for reconsideration of the amount, with the temporary injunctive relief affirmed. *AJG Holdings*, 382 S.C. at 50, 674 S.E.2d at 508.

Respectfully submitted,

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