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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
Honorable Steven C. Kirven, Master-In-Equity

Case No. 2019-CP-37-00143
Appellate Case No. 2026-000245

Roger B. Thomas and Diane M. Thomas, Appellants,

v.

Camala Hinkle f/k/a Camala H. Houck, Individually and as Trustee of the R.
Larry Hinkle Revocable Trust dated July 10, 2014 and as Trustee of the Mary
Hinkle Revocable Trust dated July 10, 2014, Benjamin E. Ferguson, Cheryl
Ann Ward, Morgan Greer, Brady G. Ward, Daniel C. Polstra, and
Karen L. Polstra, Respondents.

AMENDED INITIAL REPLY BRIEF

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INTRODUCTION¹

The Thomases never set out to own a dock on the Common Area, but that was the result of two lawsuits and two settlements over the last 20+ years. The 2004 Lawsuit came after Foster Vaughan sold the Thomases a lot in the Foster Vaughan Subdivision with a dock promised and never delivered, and the 2008 Lawsuit arose when Vaughan and the Hinkles used their majority voting power, gained through the settlement of the 2004 Lawsuit, to harass the Thomases into court a second time. The Maddox Order and the First Amendment were the price of peace, granting the Thomases the right to install a dock at their own expense and own it, and the three non-lakefront lots got the right to tie up to the Thomas dock. The deal worked for more than a decade. Only later, when the Hinkles discovered a community dock would enhance their short-term rental business, did they argue otherwise. (Tr. 180:1–5; Ex. 1202, R. at ____). Respondents argue that the Master’s ruling granting every lot owner “equal rights to use the dock” should be affirmed by pointing to history, “usefulness,” and witness intentions, but they do not point to any document that grants the lakefront lots a single dock right, or which expands the interior lot rights beyond tie-up rights. The Thomases simply seek to enforce the benefit of their hard-fought bargain in the previous litigation.

The driveway and the attorney’s fee award fare no better. Ferguson and Ward cross the Thomases’ Lot 1 under an easement for ingress and egress to their Lot 4, and nothing else. Yet they have built a driveway from Vaughn Road to Lot 15 of Jocassee Acres, the adjoining unrestricted subdivision. An easement for Lot 4 does not serve Lot 15, two recorded covenants forbid the connection, and the carving up of Lots 2 and 3 to facilitate the driveway also violated the covenants. As for fees, the Master awarded every dollar requested by Respondents without consideration of

¹ Capitalized terms have the same meanings as those applied in the Thomases’ Brief of Appellants. The Thomases have referred to the Defendants in the collective as Respondents in this Reply.

the limitations of the attorney's fee provision in the covenants and without limiting the award to claims on which Respondents sought enforcement of the covenants and prevailed.

Each of these errors warrants reversal.

ARGUMENTS IN REPLY

As an initial matter, Respondents did not include a counterstatement of the case. As such, they are bound by the Thomases' statement. Rule 208(b)(2), SCACR.

I. The Thomases own the dock, and the non-lakefront owners have tie up rights as provided in the Maddox Order and the First Amendment.

With respect to the dock, this case sought declaratory and injunctive relief. As such, it is an action in equity and is not subject to an "any evidence" standard as suggested in Section I(A) of Respondents' Brief, but rather questions of fact must be reviewed in accordance with the preponderance of the evidence. *S.C. Dep't of Transp. v. Horry Cnty.*, 391 S.C. 76, 81, 705 S.E.2d 21, 24 (2011); *Miller v. Borg-Warner Acceptance Corp.*, 279 S.C. 90, 92, 302 S.E.2d 340, 341 (1983). In addition, "[t]he determination of the scope of the easement is a question in equity," on which the appellate court "has jurisdiction to find facts in accordance with its views of the preponderance of the evidence." *Snow v. Smith*, 416 S.C. 72, 84, 784 S.E.2d 242, 248 (Ct. App. 2016) (quotations omitted); see *Hardy v. Aiken*, 369 S.C. 160, 165, 631 S.E.2d 539, 541 (2006).

A. The Thomases own the dock and that finding is the law of the case.

At the pleadings stage, the Thomases alleged that they own the dock and asked for a declaration that no Respondent holds any right in it beyond the tie-up rights of Lots 2, 3, and 5 (Am. Compl. Paragraphs 81, 84, 86, 90(a), (c)–(d), R. at ____); Respondents counterclaimed for declarations that the dock "is now a fixture" of the Common Area and "part and parcel" of it. (Hinkle Answer & CC Paragraphs 82–83; Ferguson/Ward Answer & CC Paragraphs 50–53 & Prayer

Paragraph d, R. at ____). Respondents lost on this issue when the Master found “the dock is owned by the Thomases.” (Order at 15, R. at ____).

Respondents did not file a Rule 59(e), SCRCF motion, nor did they pursue a cross-appeal. As such, the determination that the Thomases own the dock is the law of the case. *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) (“[A]n unappealed ruling, right or wrong, is the law of the case.”); *Snow*, 416 S.C. at 87 n.6, 784 S.E.2d at 249 n.6 (unappealed easement ruling). As a result, Respondents’ suggestion that the record would support a finding that the dock is a fixture of the Common Area belonging to all subdivision owners cannot serve as an additional sustaining ground pursuant to Rule 220(c), SCACR, because it would require reversal of the trial court’s ownership determination. A holding that the dock is “part and parcel” of the realty, *Creative Displays, Inc. v. S.C. Highway Dep’t*, 272 S.C. 68, 72, 248 S.E.2d 916, 917–18 (1978), would not sustain this judgment; it would replace it with a larger one, making Respondents co-owners of a dock that the Master found the Thomases own. (Order at 15, 25 Paragraph 5; Ex. 102 Paragraphs 1(b)–(e), R. at ____). See *S.C. Pub. Serv. Auth. v. Carolina Power & Light Co.*, 244 S.C. 466, 479–80, 137 S.E.2d 507, 512 (1964) (declining to accept proposed alternate sustaining ground because “[i]f the additional sustaining ground were accepted, it would not lead to the same result that the trial judge reached, but would amount to a reversal of his ruling[.]”).

B. The Master correctly found that the Thomases own the dock.

Moreover, the Master’s finding that the Thomases own the dock was correct. Mere affixation does not decide the question, *Carjow, LLC v. Simmons*, 349 S.C. 514, 519, 563 S.E.2d 359, 362 (Ct. App. 2002); and the parties may settle it by agreement. *Lane v. Bell Lumber Co.*, 122 S.C. 140, 146, 115 S.E. 207, 209 (1922). The parties’ agreement is found in three documents: the transcript of the July 31, 2006 settlement hearing before Judge Maddox (Ex. 906, R. at ____), the Maddox Order (Ex. 907, R. at ____), and the First Amendment coupled with the 2013 Settlement

Agreement recorded with it (Ex. 102, R. at ____) (collectively, the “Instruments”). Under the Maddox Order, the Thomases paid Vaughan \$15,000, agreed to the restrictions Vaughan had sued to impose (but which Judge Nicholson had ruled he was unlikely to get (Ex. 905; Tr. 95:9–25, R. at ____)), and took on the entire present and future cost of the dock. In return, the Thomases got the right to install² and own the dock, with a wet slip exclusive to them, and the three non-lakefront lots received tie-up rights in the Thomases’ dock. (Ex. 907 Paragraph 5; Ex. 102 Paragraph 1; Order at 10 Paragraph M, 12 Paragraph AA; Tr. 331:20–332:16, 520:1–15 (Mary Hinkle), R. at ____). Vaughan got the money and his desired restrictions and was relieved of the Thomases’ counterclaim on his 1994 promise to provide them a dock with a slip. (Exs. 907, 1401–02, R. at ____). The First Amendment calls the Thomases the “dock owners,” calls the dock “the private dock of Lot 1,” and places on the Thomases alone the \$1,000,000 insurance obligation and the right to cross the Common Area to maintain it. (Ex. 102 Paragraphs 1(b)–(e), R. at ____).

Until 2019, Respondents and their predecessors agreed with this characterization: they admitted the 2008 allegation referring to “their [the Thomases’] boat dock” (Exs. 1001 Paragraph 29, 1002 Paragraph 29, R. at ____); Camala Hinkle testified, “[t]hey own the dock. I cannot under the POA insure the dock because they own it” (Tr. 329:19–330:17; see also Tr. 331:20–333:24, R. at ____); and the Hinkles billed the county taxes on the dock to the Thomases alone for each year since 2008. (Exs. 401–18; Tr. 113:23–115:4, 519:19–520:9; Order at 10 Paragraph M & n.6, R. at ____). The phrase “community dock” first appears in a July 22, 2019 email by Camala Hinkle, thirteen months after the Hinkle Property went onto VRBO and AirBnB (Exs. 812, 1202; Tr. 178:20–180:22, R. at ____), and the fixture claim first appears in this case.

² The dock as installed is easily removed. It comes off its anchors in “somewhere between 15 and 30 minutes.” (Tr. 308:11–13, 315:13–23, R. at ____).

C. Respondents did not show any entitlement to use the Thomas Dock apart from the tie up rights afforded to the non-lakefront owners.

Once ownership is settled, the analysis is short. The right to exclude is “universally held to be a fundamental element of the property right.” *Kaiser Aetna v. United States*, 444 U.S. 164, 179–80 (1979). An owner may exclude everyone whom no instrument lets in, and that is also true for personal property. *See Gilmore v. Roberts*, 18 S.C. 551, 554 (1883) (one with “title to a piece of property, whether real or personal” may recover for “any unlawful use of or interference with it”). The holder of an easement has “all rights incident or necessary to its proper enjoyment, but nothing more,” and one who exceeds it “becomes a trespasser to the extent of the unauthorized use.” *Clemson Univ. v. First Provident Corp.*, 260 S.C. 640, 650, 197 S.E.2d 914, 919 (1973) (quoting 25 Am. Jur. 2d *Easements and Licenses* § 72). The Thomases’ position does not depend on the word “private.” It derives from their ownership of the dock, and a party who cannot show a right to use the dock has no right to be on it at all.

Having established that the Thomases own the dock, the inquiry turns to whether the Thomases have granted anyone else the right to use it. Respondents have the burden on that point. Because an easement exists in “derogation of the rights of the owner;” it “is not to arise without clear, unequivocal proof of such facts as will give the right from the owner to the claimant.” *Williamson v. Abbott*, 107 S.C. 397, 401, 93 S.E. 15, 16 (1917) (citation omitted); *Bundy v. Shirley*, 412 S.C. 292, 304–06, 772 S.E.2d 163, 169–70 (2015) (quoting *Williamson*; our cases “identify the claimant as having the burden of proving these elements”). Under any standard, the burden is Respondents’. They admit, “[t]here is no such easement language contained in any document,” and they have never claimed a right in the dock by prescription, necessity, or prior use. Thus, they have not met their burden of proving a general right to use the Thomas dock.

These are easement cases, and the dock is the Thomases' personal property. The rule does not turn on the difference. An easement is "a right which one person has to use the land of another for a specific purpose," *Snow*, 416 S.C. at 84, 784 S.E.2d at 248. What Respondents claim is a right to use the dock of another. Whatever it is called, it is a right to use another's property, the claimant must prove it, and it reaches no farther than its terms. Where the language creating an easement "is capable of more than one construction, the construction that least restricts the property will be adopted." *Id.* at 86, 784 S.E.2d at 249. The same rule governs a restriction on the use of property, which is how the Master treated the right. (Order at 6–7, R. at ____). A restriction "must be created in express terms or by plain and unmistakable implication," with "all doubts resolved in favor of the free use of property," *S.C. Dep't of Nat. Res. v. Town of McClellanville*, 345 S.C. 617, 622, 550 S.E.2d 299, 302 (2001) (quoting *Taylor v. Lindsey*, 332 S.C. 1, 5, 498 S.E.2d 862, 864 (1998)), and the free use it protects is the owner's. The two rules are two sides of one coin: each lets someone other than the owner limit the owner's use of what is his, and each reaches no farther than its terms. *McClellanville* is where they meet. The deed there gave the public a right to use the Town's boat ramp and parking area, and the Supreme Court, treating that right of use as a restrictive covenant and applying the free-use canon, held that "remain available for use by the public" did not mean "remain free and unrestricted," finding nothing in the deed took away the Town's "ability to manage its own property." *Id.* at 623–24, 550 S.E.2d at 301, 303.

Snow shows how the rule works. One lot on the plat there was labeled "Lake Access." Most of the homeowners' deeds said nothing about it, and the Court held that the plat gave them ingress and egress over the driveway and ramp and nothing more, finding they were "not entitled to use the Lot other than to access the lake." 416 S.C. at 86–87, 784 S.E.2d at 249. *Snow* held more because her deed said more. It granted "an easement for the use and enjoyment" of the lot, and "[n]othing

in the language of her deed limits her use only to access.” *Id.* at 86, 784 S.E.2d at 245, 249. Even so, her use was “limited to the least restrictive use,” with “rights incident or necessary to its proper enjoyment but nothing more.” *Id.* at 86, 784 S.E.2d at 249. Each claimant got what the words creating his right gave him, read as narrowly as they could fairly be read. The words here are “tie-up rights,” and they run to three lots.

Respondents and the Master invert the rule. The Master found that “[n]o documents have ever expressly limited the use of the dock” by the other owners. (Order at 11 Paragraph X, R. at ____). Respondents say those owners’ “rights to general use of the dock were never taken away.” (Resp. Br. at Section I(B)). Both erroneously put the burden on the owner to show a limitation. The law puts it on the claimant to show a right, and nothing can be “taken away” that was never established.

D. Under the Instruments, the only use right in the dock held by any Respondent is the tie-up right of Lots 2, 3, and 5.

Respondents pleaded their claim to the dock narrowly: that the dock was co-owned as a fixture of the Common Area, to which Ferguson and Ward added “the First Amendment. . . and other agreements among the parties.” (Hinkle Answer & CC Paragraphs 80–83; Ferguson/Ward Answer & CC Paragraphs 51–53 & Prayer Paragraph d, R. at ____). Respondents concede that Paragraph 1 of the First Amendment “does not expressly grant or deny anyone access to and use of the dock.” As discussed above, Respondents lost on the fixture theory, and they have not identified any other document granting a use right in the Thomas dock.

Respondents attempt to paint Paragraph 1 as ambiguous because it neither grants nor denies access expressly. That is not ambiguity.³ A writing is ambiguous when its words can reasonably be

³ Nor did the Master find an ambiguity (see Order at 13, R. at ____). Further, Respondents treat the language of Paragraph 1 as clear when it suits them. For example, they state “It cannot be disputed

read two ways. *Hawkins v. Greenwood Dev. Corp.*, 328 S.C. 585, 592, 493 S.E.2d 875, 878 (Ct. App. 1997). Whether an instrument is ambiguous, and what an unambiguous instrument means, are questions of law reviewed de novo. *Snow*, 416 S.C. at 85, 784 S.E.2d at 248. Respondents point to no word that can be read two ways. Instead, they point to what Paragraph 1 does not say. The fact that the Maddox Order and the First Amendment do not mention any use of the Thomas dock for the subdivision owners other than the tie-up rights for the non-lakefront lots does not render the agreement ambiguous. It simply means there are no such rights. See *McClellanville*, 345 S.C. at 623, 550 S.E.2d at 302–03 (finding a deed silent as to fees was not ambiguous and since there was no treatment of the subject nothing prevented the charging of fees). A writing is not made ambiguous by failing to confer a right, and unambiguous language “will be enforced according to [its] obvious meaning.” *Shipyards Prop. Owners’ Ass’n v. Mangiaracina*, 307 S.C. 299, 308, 414 S.E.2d 795, 801 (Ct. App. 1992).

Here, the Thomases do not need Paragraph 1 to deny anyone anything. Ownership does that. Paragraph 1 says who may build and keep the dock (“[t]he owners of Lot 1”), what may be used by them alone (the wet slip, “for their exclusive use”), and who else takes a right and what it is (“the owners of the three (3) other non-lakefront subdivision lots shall have tie-up rights to the dock”). (Ex. 102 Paragraph 1, R. at ____). Subparagraph 1(e) makes the Lot 1 owners’ right “to install, use and maintain one private dock” appurtenant to Lot 1 and the non-lakefront owners’ right “to use the private dock of Lot 1” appurtenant to Lots 2, 3, and 5. It provides no appurtenance for the lakefront lots because they have no rights in the dock. Subparagraph 1(f) closes the door: “Any rights to use the dock are limited to lot owners and their guests, as provided herein.” That is a

that the only language of exclusivity related to the use of the dock pertains to the wet slip.” (Resp. Br. at Section I(B)).

ceiling, not a grant, and “as provided herein” says where the rights are found: in the subparagraphs that name Lot 1 and the three non-lakefront lots. The drafters knew how to reach the lakefront lots and the Hinkle Property when they meant to: Paragraphs 6, 8, and 11 name “the Ralph L. Hinkle lot,” and Paragraph 12 names Lot 6. (Ex. 102 Paragraphs 6, 8, 11, 12, R. at ____). Thus, the Instruments do not support Respondents’ arguments.

“Tie-up rights” is likewise unambiguous. Lots 2, 3, and 5 may tie their boats to the side-tie moorings of the Thomas dock and may cross the dock to access them. The term does not include “swimming, fishing, or just standing or sitting,” which the Order awards to every lot owner, including the lakefront lots. (Order at 24, R. at ____). The Master’s own test asks whether a reasonably intelligent person “cognizant of the customs, practices, usages, and terminology as generally understood in the particular trade or business” could read the term more than one way. (Order at 7, R. at ____). The only trade-usage evidence came from Don Haynie, forty years in marine construction, who testified, “tie-up rights give you access to the boat,” to load and unload, and the term “typically. . . would not include total usage of the dock.” (Tr. 315:24–317:16, R. at ____). That testimony goes to whether the term is ambiguous; it is not extrinsic evidence offered to vary it. The uses the Order awards are not incident or necessary to tying up a boat. That is not an interpretation of the tie-up right; it is a different right, conferred on parcels that hold none. Camala Hinkle and Mary Hinkle understood the term the same way. In her 2011 deposition, read at trial, Camala Hinkle said: “I have tie-up rights. I have tie-up rights. I can get on and off my boat. I can come and go on that boat dock.” (Tr. 329:5–331:16, R. at ____). Mary Hinkle, deposed in 2010, agreed that the Thomases “got the right to own the dock” and added, “we had tie-up rights on it, the three lots.” (Tr. 331:20–332:16, R. at ____).

E. Nothing outside the Instruments supplies what they omit.

The Master found that the other owners “did not. . . give up their rights to use the dock installed by Thomas.” (Order at 15, R. at ____). That assumes some right existed. Nothing inside or outside the Instruments supplies them. The Master found no collateral agreement supplementing the Instruments, and Respondents identify none. Respondents say that no one mentioned relinquishing dock rights “in any document or conversation.” (Resp. Br. at Section I(B)). The question is not whether anyone relinquished a right; it is whether any agreement conferred one. The “historical dock-usage rights held by all subdivision lot owners” concern a different dock, the surplus dock Larry Hinkle bought in 2004, which lost a finger within weeks and had disappeared before the July 2006 settlement hearing. (Tr. 90:12–93:25, 545:4–12; Exs. 501, 1104, 1105, R. at ____). The Google Earth aerial photographs show it broken apart and then gone by June 4, 2006 (Exs. 1301, 1302, 1303, R. at ____). The Master’s statement that the new dock “replaced an existing dock” (Order at 6, R. at ____) cannot be squared with these images. There was no dock to replace. Whatever use anyone made of that derelict dock while it lasted created no right in one that did not yet exist.

The record also shows that the subject came up in the past and was dropped long before this action. In July 2006, Larry Hinkle wrote the permitting authority that if a new dock were added, “both Mr. Vaughn and Mr. Hinkle should also have access to it.” (Order at 8–9, R. at ____). The settlement gave tie-up rights to the three non-lakefront lots and nothing to the lakefront lots, and on August 28, 2006, the Hinkles and Vaughan each withdrew in writing “any objections or concerns” to the Thomas dock stated in earlier correspondence. (Order at 9; Exs. 508–09, R. at ____).

To say that the Thomases’ ownership is “subject to the. . . use rights of the other owners of the Common Area” (Order at 15, R. at ____) because the dock is attached to the Common Area is the fixture theory under another name. As such, it fails as argued above.

Nor is usefulness or convenience a source of right in another's property. Every owner's one-seventh interest and equal right to use the ramp stands untouched. (Order at 11 Paragraphs V, Y, R. at ____). Thus, the rights in the ramp and the Common Area are not "worthless." As found by the Master, each lakefront parcel has its own dock and the use of the Thomas dock "is likely to be minimal." (Order at 15, R. at ____).

Lastly, the Duke Energy permit does not supply the missing right. (Order at 9–10, R. at ____). The permit governs dealings with Duke; the Instruments govern dealings among the owners. As explained at trial, the Private Facilities Program permit must issue to an owner of the project front lot (here, the Common Area) (Exs. 525, Tr. 373:3–13, 380:4–7, R. at ____), and Duke "does not prohibit agreements among the lot owners regarding usage of the dock" as happened here. (Order at 10 Paragraph L; Tr. 371:20–380:7 (Garrison), R. at ____).

F. If the Court finds any ambiguity, it must be resolved in favor of the Thomases as the owners of the dock, and the parties' own reading before the dispute confirms that result.

The Master found no ambiguity, and there is none. If the Court finds one, the law resolves it before any witness does, and it resolves it for the owner. "Because 'use' is not defined, it must be interpreted as whatever least restricts the property owner." *Snow*, 416 S.C. at 86, 784 S.E.2d at 249. The property here is the Thomases' dock, and the reading that least restricts it is the one the text states: tie-up rights for Lots 2, 3, and 5, and no further rights granted to any other party.

What Respondents seek is not construction but implication. They concede that Paragraph 1 gives them nothing expressly and ask the Court to hold that it "implies a grant." South Carolina does not favor implied rights in another's property "because the implication of an easement in a conveyance goes against the general rule that a written instrument speaks for itself." *Inlet Harbour v. S.C. Dep't of Parks, Recreation & Tourism*, 377 S.C. 86, 91–92, 659 S.E.2d 151, 154 (2008); accord *Gooldy v. Storage Ctr.-Platt Springs, LLC*, 422 S.C. 332, 339, 811 S.E.2d 779, 782 (2018).

Respondents argue that the words “exclusive use” of the wet slip somehow imply some other use right in the Thomas dock. (Order at 13 Paragraph FF, R. at ____; Resp. Br. at Section I(B)). To the contrary, “exclusive” operates against the three lots granted tie-up rights, delineating where they may not tie up. It says nothing about parcels that received no right at all.

If evidence is weighed, what counts most is what the parties said and did before the dispute. “[W]here there is any ambiguity in a contract, or where there is doubt as to the proper construction thereof, the construction placed thereon by the parties themselves is entitled to great, if not controlling, influence.” *Stackhouse v. Pure Oil Co.*, 176 S.C. 318, 337, 180 S.E. 188, 196 (1935). From 2006 until 2019, that construction ran one way. When the terms were read into the record, Vaughan’s counsel described the tie-up lots as the “three other lots that don’t have access to the lake.” (Ex. 906 at 5:3–7, R. at ____). Mary Hinkle told Duke Energy in 2007 that the dock was “to be used by 4 property owners [the Thomases and the other 3 interior lots].” (Ex. 521; Tr. 124:13–126:4, R. at ____). Under oath and adverse to the Thomases, she agreed in 2010 that the Thomases “got the right to own the dock” and added, “we had tie-up rights on it, the three lots” (Tr. 331:20–332:16, R. at ____); Camala Hinkle testified in 2011, “I have tie-up rights. I have tie-up rights. I can get on and off my boat. I can come and go on that boat dock.” (Tr. 329:5–331:16, R. at ____). The 2013 Settlement Agreement says, “Non-water lots have tie-up rights as provided in settlement order of prior lawsuit.” (Ex. 102 at 8 Paragraph 1(a), R. at ____). The Hinkles’ pleadings and tax bills treated the dock as the Thomases’ alone, and their own rental agreement tells tenants the dock “may not be accessed by the Tenant. It is for the enjoyment of the interior lot owners only.” (Ex. 1201, R. at ____). Paragraph 61 of the 2008 Complaint is no answer: it was merely the third of three alternative prayers by the Thomases seeking relief from oppression by Vaughan and the Hinkles (Ex. 1001 Paragraphs 58, 60, 61, R. at ____).

Against that record, the Master credited two after-the-fact accounts of what witnesses “intended” or “understood.” (Order at 13 Paragraphs CC, EE, R. at ____). Neither witness claimed that the intention was communicated to the Thomases. (See Tr. 539:8–546:7 (Vaughan designations); Tr. 405:19–406:13 (Hinkle), R. at ____). Foster Vaughan was no stranger to the dispute; he was the plaintiff in the 2004 Lawsuit and a defendant in the 2008 Lawsuit. (Exs. 903, 1001, R. at ____). In his 2023 deposition he assented to counsel’s description of “the idea” of the 2006 settlement and of what “was agreed upon” (Tr. 545:13–25, R. at ____), but he named no conversation or other communication, no document, and no term or agreement outside the Instruments. Camala Hinkle was not a party to the 2004 Lawsuit, was not in court when it settled, and owned no lot until 2008. (Ex. 329, Tr. 459:17–460:8, R. at ____). For Vaughan’s understanding to become part of the agreement, it would have had to be communicated to the Thomases, which did not happen. The 2013 Settlement Agreement, to which Hinkle was a party, added no right to use the dock. (Ex. 102 at 8, R. at ____).

The Master stated the governing rule: interpretation turns on “the objective manifestation of the parties’ assent at the time the contract was made, rather than the subjective, after-the-fact meaning one party assigns to it.” (Order at 7, R. at ____). Findings CC and EE are the second kind of evidence and should not have been considered. *Accord Snow*, 416 S.C. at 88, 784 S.E.2d at 250 (court may not consider parties’ “secret intentions”). The findings report what two witnesses said they intended, not what the parties agreed. (Order at 13, R. at ____). As such, these findings do not provide evidence of any agreed intent.

That testimony reaches the question only if the Court finds an ambiguity the Master never found, the step Respondents’ own authority makes a precondition to considering evidence of intent. (Resp. Br. at Section I(A) (quoting *Snow*, 416 S.C. at 89, 784 S.E.2d at 250)). Without that step it is incompetent, objection or not. The parol evidence rule “is a rule of substantive law, not a rule of

evidence,” and evidence that offends it “is legally incompetent and should not be considered even if no objection is made at trial.” *In re Estate of Holden*, 343 S.C. 267, 276, 539 S.E.2d 703, 708 (2000). That the Thomases offered extrinsic evidence as to their ownership of the dock changes nothing. In defending against Respondents’ fixture theory, the Thomases were free to present evidence relating to their intent in installing the dock and the relationship of the parties. *Creative Displays*, 272 S.C. at 72, 248 S.E.2d at 918. But the Court need not rest on the rule. Here, Respondents had the burden of showing a right to use the Thomas dock and, at face value, the testimony of Vaughan and Camala Hinkle shows only what two people claim they privately intended after the fact, not what the parties agreed. The Court can accept every word of Vaughan’s and Hinkle’s testimony and still find that burden unmet.

For these reasons, the Master erred in finding that Respondents had a general right to use the Thomas dock outside the rights conferred in the Instruments.

II. The covenants do not allow for the use of Vaughn Road to access Lot 15 in Jocassee Acres.

The Thomases sought an injunction against using Parcel A for ingress and egress between Lot 15 in Jocassee Acres and Vaughn Road. (Am. Compl. Prayer Paragraph 1(a), R. at ____). The Master erred in failing to grant this relief. *See Donald E. Baltz, Inc. v. R.V. Chandler & Co.*, 248 S.C. 484, 151 S.E.2d 441 (1966).

A. The easement over Lot 1 serves Lot 4 alone.

Every right of access over Vaughn Road is tied to an enumerated parcel. — the Hinkle Property by express easement (Exs. 210, 314; Order at 4, R. at ____), Lots 1 through 6 by their deeds and the recorded plats (Exs. 201, 213, 317, 320, 323, 327, 328, R. at ____), and “all lot owners” and “the Ralph L. Hinkle property” under the covenants (Ex. 101 at 7; Ex. 102 Paragraphs 6, 8, 11, R. at ____). Nothing mentions Lot 15. Respondents “acknowledge the only reason they can access Lot

4. . . directly from Lot 15. . . is because they own Lot 4,” they “do not take the position that such right of access is appurtenant to Lot 15,” and they agree that if Lot 15 were sold to a stranger to Lot 4 “the new owners of Lot 15 would not have the right to use Vaughan Road.” (Resp. Br. at Section II(B)). The Master found the same. (Order at 17 Paragraph B, R. at ____).

Those concessions give away the point. An easement appurtenant to a dominant tenement “can be used only for the purposes of that tenement; it is not a personal right.” *Rhett v. Gray*, 401 S.C. 478, 494–96, 736 S.E.2d 873, 881–82 (Ct. App. 2012) (quotations omitted). *Rhett* goes on to state that an easement appurtenant to one parcel “may not be extended by the owner of the dominant estate to other parcels owned by him, whether adjoining or distinct tracts, to which the easement is not appurtenant,” and “any extension thereof to other parcels is a misuse of the easement.” *Id.* A trip whose origin or destination is Lot 15 is outside the grant, and common ownership of the two parcels is the ordinary posture in which the rule applies.⁴

Use of an easement for land to which it is not appurtenant is “[i]n the strictest sense. . . misuse,” and South Carolina “has not expressed” any principle excusing it. *Id.* at 499, 736 S.E.2d at 884. In *Rhett*, the court tolerated the extension because the easement “was originally granted to the entire” tract the Rhett later reassembled and the added burden was slight, and it affirmed an injunction against serving other adjacent land of the Rhett outside that grant, though doing so “would have increased the usage by one household containing two people.” *Id.* Lot 15 was never within any grant of access over Vaughan Road. The Master’s reason for finding no increased burden was legal, not evidentiary: because Ferguson and Ward may reach Lot 4 over the road, “no additional use of Vaughan Road is required by that fact.” (Order at 19, R. at ____). That is the non sequitur the appurtenance rule exists to prevent, and the Master’s ruling should be reversed.

⁴ That pedestrian access is possible is beside the point; this case is about a driveway.

Moreover, even if Lot 15 traffic could lawfully be routed over Vaughn Road, the owner of an easement may not “impose thereon a new and additional burden.” *Clemson*, 260 S.C. at 650, 197 S.E.2d at 919. The burden is new in kind for three reasons. First, it converts a terminating private drive into a connector between two subdivisions. Ferguson and Ward owned Lots 5, 12, 15, 17, and 20 in Jocassee Acres, and Lot 15 fronts the Jocassee Acres road network. (Exs. 203, 217, 333, 351, 611–13; Tr. 254:21–23, 549:5–7, 572:14–18, R. at ____). Second, it admits rental users the First Amendment excludes from the subdivision. Lastly, it shifts the cost of maintaining and insuring Vaughn Road to owners to whom Lot 15 owes nothing. (Ex. 101 at 7; Ex. 102 Paragraphs 2–4, 11; Exs. 104, 105; Tr. 570:17–571:2, R. at ____).

B. Respondents’ cotenancy theory was not adopted by the Master and does not justify an expansion of the road easement to extend beyond Lot 4.

Respondents also argue that because the owners of Lot 4 hold an undivided 1/7 interest in the road, easement principles do not apply. The Master did not adopt that theory. What the Order describes as owned in sevenths is “[t]he 30-foot easement” (Order at 4, 5, R. at ____), and it decides the driveway by asking whether “[t]he Vaughan Road easement” has been “extended.” (Order at 18 Paragraph E, 19, R. at ____). The Master said the same from the bench: “it’s the right-of-way that everybody has a one-seventh interest in. You can still have property underlying the right-of-way, but it’s subject to that.” (Tr. 475:9–12, R. at ____). The record bears him out. Vaughan deeded Lot 1 to the Thomases in 1994, before any other lot, by a deed and plats that show Lot 1 as 2.008 acres “inc. all r/w” with Vaughn Road running within it; the same deed’s one-seventh interest is in the “30 ft. right of way.” (Exs. 317, 213, 201; Tr. 79:16–80:25, R. at ____; Mot. to Alter or Amend Paragraphs 22–25, R. at ____). When Vaughan sold Lots 2, 3, 4 and 5, and the Hinkle Property, he conveyed the fee to the middle of Vaughn Road. (Exs. 201, 210, 323, 320, 327, R. at ____). The Original Covenants contain no words of conveyance. (Ex. 101 at 7, R. at ____). Camala Hinkle

agreed that the Thomases own Lot 1 where the road crosses it “subject to an easement that everybody can use it to go across,” and that her one-seventh interest “is the road for a right-of-way for us to use.” (Tr. 467:15–22, 469:7–12, R. at ____). Her deed to Ferguson and Ward says the same thing: she conveyed Parcel A to the middle of Vaughn Road (Exs. 202, 340; Tr. 464:14–465:1, R. at ____), which she could not have done if the roadbed belonged to seven owners in common.

Nor would the label matter. Respondents concede that their right of access arises from their ownership of Lot 4. The road serves the lots the Instruments name (Ex. 101 at 7; Ex. 102 Paragraphs 2–4, 6, 8, 11, R. at ____), and Lot 15 is not among them. Whether Ferguson and Ward hold their access as co-owners or as easement holders, they may use Vaughn Road for Lot 4, not as a conduit to Lot 15.

C. Paragraph 1 of the Original Covenants bars the driveway because Parcel A is being used exclusively as a roadway serving a lot outside the subdivision.

Paragraph 1 of the Original Covenants provides that “[n]o lot or other portion of the property shall be used for any purpose other than single family residential purposes.” (Ex. 101 at 1, R. at ____). Respondents’ answer that Lot 4 remains suitable for single-family residential use changes the unit of analysis. Paragraph 1 restricts every “portion of the property,” and the parcel at issue is Parcel A, a strip carved from Lot 2 and running to the Jocassee Acres line, which is not a homesite, and whose sole improvement is a roadway carrying vehicles between Vaughn Road and a lot in another subdivision. (Exs. 202, 1113–16; Tr. 156:1–13, 464:6–18, 466:5–11, R. at ____).

These facts place this case squarely in line with *Baltz*. Reading the covenants there together, the *Baltz* court held that the permitted residential use was “as the site of a single family residence” and “such other use as may be incidental to the occupation of the residence as a habitation,” and a roadway across the lot to a residence on a contiguous tract was “not incidental to residential use within the meaning of the restrictions.” 248 S.C. at 489–90, 151 S.E.2d at 444. *Baltz* contrasts that

use with “the use of part of a residential lot as a driveway, which is an incidental, residential use.” *Id.* The difference is what the driveway serves. A driveway on a lot that is the site of a residence serves that residence. A driveway that serves a residence on another lot does not, as was the case in *Baltz*. *Id.* at 487, 489–90, 151 S.E.2d at 443–44. There, the roadway was enjoined because it was “incompatible with the only conforming use to which the property may be put, to wit: a single family residence.” *Id.* The same is true here: Parcel A and Lot 4 do not contain any residences and the driveway serves a residence on Lot 15 in another subdivision. (Tr. 548:2–3, 549:1–12, 581:15–22, R. at ____). Common ownership changes nothing: the lot owner in *Baltz* also owned the tract the road served and called the road a private drive to his son’s residence, and the Court enjoined it. *Id.* at 486–87, 151 S.E.2d at 442–43.

D. Paragraph 6 of the First Amendment bars the driveway because the gated road was reserved to a closed class that does not include Lot 15.

Paragraph 6 of the First Amendment requires a gate on Lot 1 for “the use and benefit of all subdivision lot owners, as well as the owners of the Ralph L. Hinkle lot.” (Ex. 102 Paragraph 6, R. at ____). It names a closed class that excludes Lot 15.

Respondents answer that the gate was never installed. A locked gate had controlled Vaughn Road for decades below the Addington house (Exs. 1102, 1103; Tr. 388:12–25, 389:17–24, 393:6–8, R. at ____), and the owners let the second gate go because it would have either required all lot owners to open and close two gates instead of one or remove the gate on Duke property, which would have placed the Addingtons, whose access rights predate the subdivision, outside of the protection of any gate. (Exs. 209, 306, 307; Tr. 68:20–70:1, 176:17–178:19, 275:18–276:7, Tr. 148:14–149:4, 385:15–25, 609:17–612:8, R. at ____). A recorded covenant is not repealed by leaving its hardware unbuilt. That the Addington and Hinkle properties, both outside the

subdivision, reach Vaughn Road through the Duke Energy gate misses the distinction: those lots carry recognized, longstanding easement rights in the road; Lot 15 holds none.

III. The subdivision of Lots 2 and 3 did not enlarge any other parcel within the subdivision and violated Paragraph 3 of the Original Covenants.

Paragraph 3 of the Original Covenants prohibits subdividing lots or changing their boundaries, except that contiguous lots may be merged into a single lot and “any lot may be subdivided for the purpose of enlarging adjoining lots.” (Ex. 101 at 2, R. at ____). The subdivision of Lots 2 and 3 to create an access strip to Lot 15 serves no enlarging purpose within the meaning of the covenants and should have been declared void. Lot 2, from which Parcel A was taken, does not adjoin Lot 4, and Parcels A, B, and C (Parcel C includes Lot 4) were conveyed as separate parcels, with no recorded evidence of an actual combination into Lot 4. (Exs. 201, 202, 340; Tr. 466:5–11, R. at ____). Respondents cannot cure this fact by offering to “stipulate in this appeal that the parcels [A and B] have been combined into Lot 4.” (Resp. Br. at Section III(B)).

Most importantly, the subdivision was not undertaken “for the purpose of” enlarging Lot 4, and purpose is not beyond the purview of the courts. After the Thomases refused Ferguson a right of way on July 4, 2017, the plat creating Parcels A and B followed within three months, the conveyance to Ferguson and Ward five weeks later, and the driveway was built in December 2018. (Tr. 548:8–14, 587:6–15; Exs. 202, 340, 1113–16; Tr. 589:5–12, 156:4–6, 183:1–3, R. at ____). The water-and-septic explanation does not account for Parcel A, where the driveway was built, and Hinkle sought no perc test, well, engineering, or septic permit for Lot 4 before she sold it. (Tr. 476:10–15, 478:22–479:8, R. at ____).⁵ The documents tell the story here—this subdivision was designed to create the driveway, not to enlarge Lot 4.

⁵ By way of correction, the Thomases miscited Tr. 476:9–15, R. at ____ in their Appellant’s Brief for the absence of water or sewer lines between Lots 4 and 15. The testimony instead reflects the lack of perc testing. Respondents do not claim a line was installed.

IV. The Master failed to apply the attorney’s fee provision in the First Amendment as written.

Paragraph 7 of the First Amendment provides that in an action for the enforcement of the restrictive covenants “attorneys’ fees will be determined in the same manner as in a SC mechanics lien action.” (Ex. 102 Paragraph 7, R. at ____). The 2013 Settlement Agreement’s promise that the covenants “will be amended so that any disputes heretofore must be resolved through litigation” does not enlarge Paragraph 7. That sentence chooses a forum, and it was a promise to amend, not the amendment. The amendment is the First Amendment — the fuller and final instrument, which controls where the two differ (Order at 20, R. at ____) — and there “any disputes” was changed to “[a] lot owner may enforce these Restricted Covenants through litigation.” (*Compare* Ex. 102 at 8–9 Paragraph 10, *with id.* at 3–4 Paragraph 7, R. at ____). Both instruments require the same first step, written notice to “the alleged violating party” of “the violation” and thirty days to cure, so read together they tie fees to enforcement after a violation.

Respondents’ construction takes from the mechanics’ lien statutes the prevailing-party entitlement and discards the two features that define how fees are determined — identification of the prevailing party by comparing settlement offers to the verdict, and the cap limiting fees to the amount of the lien — which Respondents call “not applicable.” S.C. Code Ann. §§ 29-5-10 & 29-5-20. In doing so, Respondents seek to rewrite the provision to be a standard prevailing party provision, rather than applying the language agreed to by the parties.

The case cited by Respondents, *Herrington v. SSC Seneca Operating Co., LLC*, 435 S.C. 243, 248, 866 S.E.2d 579, 581 (Ct. App. 2021), instructs that a court must read “the entire agreement from beginning to end” and that “all portions of a contract are inserted for a purpose.” The parties did not write “the prevailing party shall recover its fees.” They wrote that fees “will be determined in the same manner” as in a lien action.

Respondents contend the Thomases’ construction renders Paragraph 7 meaningless because a mechanics’ lien can never arise under the covenants. Not so. The Original Covenants create a lien for unpaid maintenance assessments, and the First Amendment continues those assessments. (Ex. 101 at 7; Ex. 102 Paragraphs 3–4, R. at ____). An action to collect assessments is a monetary claim secured by a lien in a stated amount. This is the setting in which offers, verdict comparison, and a cap operate sensibly. Without a monetary claim, the statutory machinery yields no fee, which is a consequence of drafting a covenant that cross-references a lien statute. Reading Paragraph 7 to reach declaratory litigation, with no cap and no offer mechanism, is writing a different provision. *Huskins v. Mungo Homes, LLC*, 444 S.C. 592, 594–95, 910 S.E.2d 474, 476 (2024).

Respondents rely on *T.W. Morton Builders, Inc. v. von Buedingen*, 316 S.C. 388, 403, 450 S.E.2d 87, 95 (Ct. App. 1994) and *EFCO Corp. v. Renaissance on Charleston Harbor, LLC*, 370 S.C. 612, 635 S.E.2d 922 (Ct. App. 2006) for the propositions that a prevailing party must be awarded fees and that a successful defendant recovers them without a trial or exchanged offers. Those cases present different facts than this one because both were lien foreclosure actions involving liens in stated amounts. *T.W. Morton* holds that the discretion runs only to amount, “subject to the guidance set forth in 29-5-10 as to who is a prevailing party,” 316 S.C. at 403, 450 S.E.2d at 95, and *EFCO* confines the award to fees “actually incurred in defending the lien,” 370 S.C. at 620, 635 S.E.2d at 926.

Respondents’ reading of the offer provisions proves the point. On their own account, a plaintiff who makes no offer is deemed to offer the amount prayed for in his complaint, and a defendant who asserts no counterclaim is deemed to offer zero. The Thomases prayed for no sum of money, and Respondents’ counterclaims, which were not compulsory to any lien claim and stated no amount, are valued at zero. (Mot. to Alter or Amend Paragraph 38, R. at ____). Both deemed

offers are therefore zero, and so is the verdict; there is no prevailing party, and the cap is zero. S.C. Code Ann. §§ 29-5-10(b) & 29-5-20. That result is not “absurd.” It simply means that there was no agreement that fees would be awarded in a case like this one.

Respondents place weight on Paragraphs 94 and 95 of the Complaint filed in March 2019. That pleading was superseded. The Thomases amended their complaint in October 2022, and the Amended Complaint asks the Court to “construe said provision of the Restrictive Covenants to determine whether their attorneys’ fees, expenses of litigation and costs are recoverable under said provision, and, if so,” to award them. (Am. Compl. Paragraphs 99–100 & Prayer Paragraph 5, R. at ____). That is the question presented here, and the authority to award fees “can come only from a statute or be provided for in the language of a contract.” *Seabrook Island Prop. Owners’ Ass’n v. Berger*, 365 S.C. 234, 238–39, 616 S.E.2d 431, 434 (Ct. App. 2005).

V. If Paragraph 7 applies at all, the award must be remanded for an allocation.

Even if fees are available in some measure, the award of \$319,849.26 cannot stand. Respondents did not prevail at trial on all claims. The Thomases’ position below and here is that fees, if available at all, are confined to the causes of action that sought to enforce a covenant and on which Respondents prevailed — the First (single-family residential use) and the Third (subdivision of Lots 2 and 3). The Master instead awarded every dollar requested on every claim without allocation. (Order at 20–23, 25 Paragraph 4; Mot. to Alter or Amend Paragraphs 30–34, R. at ____).

Respondents did not prevail on their counterclaims asserting that the dock is a fixture (Order at 15, R. at ____), and they abandoned their remaining counterclaims on the first morning of trial. (Order at 24, 25 Paragraph 6; Tr. 41:6–45:11, 183:22–184:9, 189:7–190:19, R. at ____). Thus, no fees should have been awarded for time spent on the counterclaims.

In addition, Paragraph 7 authorizes fees only where “[a] lot owner. . . enforce[s] these Restricted Covenants,” and it says what enforcement is: written notice “of the violation” to “the alleged violating party,” a thirty-day cure period, then litigation. (Ex. 102 Paragraph 7, R. at ____). The First and Third Causes of Action are enforcement claims in that sense; each alleges a violation of a named covenant. (Am. Compl. Paragraphs 60–64, 72–79, R. at ____). The Fourth is not. It alleges no covenant violation, but rather seeks a declaratory judgment as to the Thomases’ ownership of the dock and the limits of the tie-up rights, with an injunction to protect that property. (Am. Compl. Paragraphs 80–93, R. at ____). Construing an instrument to declare rights is not enforcing it against a violation. *See Queen’s Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 374–75, 628 S.E.2d 902, 920 (Ct. App. 2006) (party bringing a declaratory action to construe covenants was not a “violator” under a fee clause limited to violators). Respondents’ dock counterclaims likewise enforced no covenant; they sought a declaration that the dock is a fixture of the Common Area. (Hinkle Answer & CC Paragraphs 82–83; Ferguson/Ward Answer & CC Paragraphs 50–53 & Prayer Paragraph d, R. at ____).

The Second Cause of Action falls outside Paragraph 7 as well. It pleads that use of Vaughn Road for Lot 15 exceeds the scope of, and overburdens, an appurtenant easement (Am. Compl. Paragraphs 65–71, R. at ____). This is a common-law claim that invokes no covenant. That it concerns the same driveway as the First Cause of Action does not merge the two. In *Utilities Construction Co. v. Wilson*, 321 S.C. 244, 247–48, 468 S.E.2d 1, 2–3 (Ct. App. 1996), the lien and non-statutory claims arose from the same project, and this Court held that “it is the enforcement of the lien which confers the right to attorney fees, and not the joinder of an attempted enforcement with another non-statutory cause of action.” As a result, the time spent on the claims relating to the dock or the easement should not have been included in the fee award.

The Master made no allocation among claims, identified no covenant provision enforced by any cause of action, and awarded the full amounts requested. This Court has reversed on precisely that record. In *Utilities Construction*, 321 S.C. at 250, 468 S.E.2d at 4, the owner defeated a mechanic's lien joined with two non-statutory claims and recovered a fee supported by an affidavit reciting counsel's "total fee for services [rendered] through trial." This Court found an abuse of discretion because "some substantial portion" of that time had been spent on the other claims and remanded for an award based on the time spent defending the lien cause of action "only." The affidavits here suffer from the same omission: they certify total fees, and the attached time entries are not allocated by claim (Hinkle Mem. in Supp. of Att'y's Fees at 6 & Ex. A; Ferguson/Ward Mem. in Supp. of Att'y Fees & Costs, Ex. 1, R. at ____). A fee award tied to a particular claim must be confined to that claim. *EFCO*, 370 S.C. at 620–21, 635 S.E.2d at 926–27. *Maybank v. BB&T Corp.*, 416 S.C. 541, 580, 787 S.E.2d 498, 518 (2016), which Respondents cite for their standard of review, upheld an award only because a twenty-percent reduction "accounts for a distinction in the claims and the time allotted to defend claims unrelated to the UTPA."

Nor was the unallocated portion insignificant. The Order calls the dock "a central focus of this litigation" (Order at 7, R. at ____), and Respondents' own fee memorandum lists it first among the "three primary issues" tried (Hinkle Mem. in Supp. of Att'y's Fees at 3, R. at ____). A reasoned reduction is required, and here there was none.

Respondents answer only with a footnote observing that the Thomases "did not contest the reasonableness" of the amounts sought. (Resp. Br. at n.7). Reasonableness and allocation are different questions, and allocation was contested twice below. The Thomases asked the Master to award fees "only for the causes of action which sought enforcement of the Restrictive Covenants and obtained such enforcement." (Mem. in Opp'n to Defs.' Req. for Award of Att'y Fees at 5, R.

at ____). They renewed the request under Rule 59(e), SCRCPP, asking in the alternative that the Master determine the fees incurred on the causes of action on which relief was granted and identify the covenant provisions enforced. (Mot. to Alter or Amend Paragraphs 30–34, R. at ____). The motion was denied without discussion. (Order of Jan. 8, 2026, R. at ____). Respondents’ brief does not answer the allocation argument at all.

Finally, this Court has reversed a fee award even where the Master made specific findings on every reasonableness factor, because the record did not support them. *TCC of Charleston, Inc. v. Concord & Cumberland, LLC*, 446 S.C. 202, 229–31, 918 S.E.2d 699, 713–14 (Ct. App. 2025). If any award survives, the matter must be remanded with directions to allocate among the claims.

CONCLUSION

For the reasons stated here and in the Thomases’ Appellants’ Brief, the Order and Judgment should be reversed as to the use of the dock, the driveway, and the subdivision of Lots 2 and 3. In addition, the award of attorney’s fees and costs should be reversed or, at the very least, remanded for an allocation such that the fee award is limited to claims seeking enforcement of the restrictive covenants on which the Defendants prevailed.

Respectfully submitted,

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