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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable B. Alex Hyman, Circuit Court Judge

Appellate Case No. 2026-000666

R. Paul Benik, Jr., Rudolph Paul Benik, III, Paula W. Benik, Anton F.B.R. Poster, Sr. and Teresa L. Poster, Johann M. Mccrackin, Timothy J. Wentzel and Lisa D. Abrams, Sherry S. Weatherly, John D. Diehl and Lisa R. Diehl, Paul H. Errickson and Linda M. Errickson, Saundra Pridgen, Ronald K. Reynolds, V. Scott Miles, Vernon G. Miles, Sharon E. Miles, Deborah Floyd, Brooks M. Safrit, Woodrow S. Safrit, Steven Alan Speares and Sylvia Mccall Speares, Trustees of The Speares Revocable Trust u/a/d September 24, 2019, Steven P. Lombardi and Lisa A. Lombardi, Charles B. Hall, Virginia G. Hall, Sonia Heydt, Trustee of The Sonia Heydt Living Trust, dated December 10, 2024, Wendy Pivarnik, Joye S. Bull, Tumpie B. Bull, Maxine Williams, Trustee of The Maxine Williams Living Trust dated October 31, 2017, Kim Ritchie, Van Raye Ritchie, William B. Burch, Sharon K. Burch, Timothy G. Martin, Rebecca A. Harrington and Brian J. Martin, as Trustees of The Guy E. Martin and Ann M. Dozier Irrevocable Trust dated January 25, 2017, Miriam R. Cromer, Norwood Nicholson Cox and Janet Harrington Cox, Thomas P. Collins and Susan Lee Collins, Shawn Kelley and Karen Albert, and Jerry Steven Wilson and Dana Pridgen Wilson, Pama C. Free, Giovanni Carapelli, Julie A. Brooks, Jennifer Rae Morris, Craig L. Lambert and Lisa M. Lambert Henry Lawrence Sanderson, III, Trustee of The Henry Lawrence Sanderson, III Revocable Trust dated January 9, 2020, Ronald G. Brooks and Robin D. Brooks, Robert Christopher Jones and Melissa Coghill Jones, Darryl C. Williams and Mary Torrence Williams, David T. Taylor and Catherine T. Taylor, Samuel Deep and Dianne Deep, Natali D. Amaradasa, Rosemary Long Jenrette, and Arcadian Shores Single-Family Residential Homeowners Association, Inc.,……...…… Appellants,

v.

Arcadian Incorporated of Myrtle Beach,……...……..Respondent,

FINAL REPLY BRIEF OF APPELLANTS

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STATEMENT OF THE CASE

This interlocutory appeal concerns the denial of temporary injunctive relief. It does not ask this Court finally to adjudicate title to the southeastern terminus of Arcadian Drive, declare an unlimited parking easement, or resolve every question concerning the ultimate scope of the claimed easement. The narrower question is whether the circuit court applied the correct provisional-relief framework to a record presenting substantial evidence that Arcadian Shores lot owners acquired private, appurtenant rights in platted subdivision streets for meaningful access to the Atlantic Ocean, and that Respondent later conditioned and restricted that use through requirements not shown to arise from the creating instruments.

Appellants moved for temporary protection after Respondent imposed and enforced controls including Respondent-issued credentials, an application, a liability waiver, charges, towing consequences, fencing or barriers, and parking restrictions at the beach-access portion of Arcadian Drive. **[R. pp. 573–575, 594–595.]** Appellants did not seek unregulated occupation of Respondent's property. They sought preservation of pedestrian and vehicular beach access, including reasonable temporary, nonexclusive, nonobstructive use consistent with the subdivision's design and historical practice. **[R. pp. 25–27, 603, 607.]**

The preliminary record also contains evidence that Respondent sold annual parking privileges to property owners outside Arcadian Shores while declining to recognize subdivision-owner identification, imposing additional requirements on Appellants, threatening towing, and towing an identified subdivision owner's golf cart. **[R. pp. 573–574.]** That evidence materially affects the provisional analysis. It permits a reasonable question whether Respondent's system is neutral and narrowly tailored; whether permissive outsiders are being preferred over holders of

asserted appurtenant rights; and whether the governing instruments authorize the asserted fee, waiver, credential, and parking conditions.

The circuit court denied relief. **[R. p. 14.]** Its analysis characterized the claim as one for "unrestricted parking," treated the absence of an instrument expressly using the word "parking" as substantially dispositive, accepted Respondent's disputed procedures as the operative baseline, found no irreparable harm because some access remained available upon compliance, and separately balanced the equities in Respondent's favor. **[R. pp. 12–14.]** The order should be reversed because those premises distort both the right asserted and the provisional inquiry. At minimum, the case should be remanded for application of the correct standards to the full preliminary record.

STATEMENT OF THE FACTS

Arcadian Shores is a residential and oceanfront subdivision developed in the 1960s. **[R. p. 580.]** The Developer recorded the "Map of Arcadian Shores" on March 1, 1965 **[R. p. 581.]** The plat depicts numbered lots, subdivision roads, and routes extending toward the Atlantic Ocean, including Arcadian Drive, a seventy-five-foot right-of-way. **[R. pp. 30, 32, 554–555.]** Appellants contend their lots were conveyed by deeds referencing that recorded subdivision plat **[R. p. 581],** thereby creating private, appurtenant easement rights in the depicted roads. **[R. pp. 582–583.]**

The geographic context is material but not dispositive. The preliminary record reflects that the identifiable numbered residential lots lie approximately three-eighths to two-thirds of a mile from the ocean terminus of Arcadian Drive when measured along the apparent platted-road routes. The evidence supports Appellants' position that vehicular travel, loading and unloading, pickup and drop-off, and reasonable temporary use near the terminus are practical incidents of meaningful ocean access. It does not independently establish an unlimited parking right. **[R. pp. 575–576.]**

The organized conveyance evidence reflects that OLIC conveyed the subdivision's residential lots by deeds referencing the recorded map. **[R. pp. 581.]** Sixty-two of the seventy-eight identified residential lots had been conveyed before January 1, 1982; the remaining sixteen appear in instruments recorded January 11, 1982. **[R. p. 571, ¶ 21.]** On January 8, 1982, OLIC executed a quitclaim deed for beachfront property limited to recreational use for specified beneficiaries and expressly subject to easements and restrictions of record, including those shown on recorded maps and plats. **[R. pp. 449–450.]**

A later corrective quitclaim deed records that an earlier road conveyance had been refused and never accepted, and it grants a nonexclusive easement for access, ingress, and egress from the numbered lots to and from the Atlantic Ocean across specified subdivision streets, roads, and common areas. It was executed June 8, 1982 and recorded June 14, 1982. **[R. pp. 452–454.]** Appellants rely on that instrument as confirmatory evidence of the subdivision access arrangement—not as the sole source or temporal origin of all claimed plat-based rights.

The preliminary record further includes evidence of the road's design, developer intent, customary pedestrian and vehicular access, historical temporary nonobstructive parking near beach-access points, and an Association identification system used from approximately 2000 through 2023. **[R. pp. 554–555, 559–561, 566–570, 158.]** Respondent later imposed or enforced a different system involving its own credentials, application, waiver, restrictions, towing consequences, and associated charges. **[R. pp. 573–575, 594–596.]**

The historical record includes the 1982 judgment in Julia S. Haile v. The Arcadian Incorporated of Myrtle Beach. **[R. pp. 1–3.]**

Appellants contend that the Haile court recognized private easements in subdivision streets for owners whose lots were sold with reference to the Arcadian Shores plats and enjoined

interference or encroachment upon those roadways. **[R. p. 3.]** Appellants rely on Haile as contemporaneous evidence that Arcadian Shores lot owners possessed enforceable private rights in subdivision streets and used Arcadian Drive and Beach Club Drive for ocean access, not as a final adjudication of every present parking issue. **[R. p. 2.]**

The preliminary record also includes affidavits concerning subdivision design, developer intent, and historical use. Appellants presented evidence concerning the road widths, the intended beach-access function, customary pedestrian and vehicular use, and historical temporary parking near beach-access points. **[R. pp. 554–555, 559–561, 566–570.]** Appellants confined the claimed use to temporary, nonexclusive, nonobstructive parking and related incidents of meaningful beach access. **[R. pp. 603, 607.]**

From approximately 2000 through 2023, the Association used an identification or decal system for numbered-lot owners and their guests. **[R. p. 158.]** Appellants contend that this system managed beach-access use without surrendering their position that their rights were appurtenant property rights rather than revocable permissions. **[R. pp. 572–573.]**

Respondent later imposed or enforced a different system involving Respondent-issued decals or credentials, an application, a liability waiver, restrictions, towing consequences, and associated charges. **[R. pp. 594–596.]** Respondent contends those measures are neutral, uniformly administered, protective of drainage infrastructure, and necessary to manage liability and prevent overburdening. **[R. pp. 594–596.]**

But the preliminary record contains contrary evidence. Appellants presented evidence that Respondent sold annual parking privileges to Ocean Ridge property owners and others outside Arcadian Shores **[R. pp. 573–574]**; allowed its staff, cleaning crews, subcontractors, and rental overflow vehicles to park in or along the Arcadian Drive right-of-way; declined to recognize the

Association's identification system; threatened subdivision owners with towing; and allegedly towed an identified lot owner's golf cart from the beach-access point. **[R. pp. 573–575.]**

That evidence is relevant for several independent reasons. First, it tends to rebut Respondent's assertion that applications, waivers, fees, and Respondent-issued credentials are necessary and uniformly administered safety measures. Second, it raises a substantial question whether Respondent is allocating limited roadway or beach-access capacity to permissive outside users while burdening persons claiming senior appurtenant rights. Third, Respondent's sale of parking privileges tends to undermine any categorical contention that parking is physically incompatible with the property, inconsistent with its use, or impermissible because of infrastructure concerns. Fourth, if the paid-parking area lies within property restricted by the January 1982 deed **[R. pp. 449–450]**, the practice raises an additional question whether Respondent is commercially licensing restricted recreational property to persons outside the designated beneficiary class.

Appellants do not contend that the present record finally resolves the precise boundaries of Parcel B, the Arcadian Drive right-of-way, and the beachfront recreational tract. Those matters remain for survey, title analysis, discovery, and final adjudication. At the provisional stage, however, the instruments, plats, affidavits, historical use, unequal enforcement evidence, and paid-outsider-parking evidence create more than a speculative question concerning Respondent's authority and Appellants' likelihood of success.

STANDARD OF REVIEW

A preliminary injunction is appropriate when necessary to preserve the status quo ante and the movant shows irreparable harm, likelihood of success on the merits, and no adequate remedy at law. Poynter Investments, Inc. v. Century Builders of Piedmont, Inc., 387 S.C. 583, 586–87,

694 S.E.2d 15, 17 (2010). A separate balancing-of-the-equities requirement is neither necessary nor appropriate because pertinent equitable concerns are subsumed in the established elements. Id.

At this stage, Appellants were not required to prove an absolute legal right or obtain a final adjudication of easement scope. They were required to present a reasonable question concerning the asserted right and a prima facie showing sufficient to support interim protection. AJG Holdings, 382 S.C. at 51, 674 S.E.2d at 509.

Finally, an error in the governing framework cannot be dismissed as harmless unless the record demonstrates that it did not affect the result. Fairchild v. Department of Transportation, 385 S.C. 344, 348–49, 683 S.E.2d 818, 820–21 (Ct. App. 2009), holds that reversible error requires both error and prejudice, and explains that an error is harmless only when it did not contribute to the result. Here, the mischaracterization of the right, the status-quo baseline, the harm inquiry, and the added balancing hurdle permeated the order; the error was consequential, not collateral.

ARGUMENT

I. Respondent's "unrestricted parking" premise does not address the right actually asserted.

Respondent repeatedly describes the requested relief as a demand for "unrestricted parking." That framing substitutes a broader claim for the one Appellants advanced. Appellants do not claim a right to park anywhere, at any time, in any manner, or without regard to traffic, safety, drainage infrastructure, or the correlative rights of others. They assert private, appurtenant rights in platted Arcadian Drive for beach access, ingress, and egress, and contend that reasonable, temporary, nonobstructive parking may be an incident of the historic beach-access use. **[R. pp. 25–27, 603, 607.]**

The distinction controls the preliminary analysis. Treating the case as a demand for unregulated parking permits Respondent to label its challenged conditions neutral administrative

procedures, to make the absence of the word "parking" decisive, to reduce the alleged injury to a reimbursable fee or tow, and to define its own contested restrictions as the status quo. Those conclusions do not follow when the asserted right is accurately understood as a property interest in a platted subdivision road and beach-access route.

Respondent's assertion that Appellants may walk or drive on Arcadian Drive if they execute Respondent's waiver, obtain Respondent's credential, pay the asserted charges, and observe Respondent's restrictions does not eliminate the controversy. **[R. pp. 594–596.]** It identifies it: whether a servient owner may condition exercise of an asserted preexisting property right on new requirements for which no recorded authority has been shown. Calling the requirements neutral does not establish authority to impose them.

Respondent's renewed drainage rationale cannot be treated as a categorical answer to Appellants' request for limited, temporary, nonobstructive vehicular beach access. **[R. pp. 2–3.]** In Julia S. Haile v. The Arcadian Incorporated of Myrtle Beach, Civil Action No. 81-CP-26-1816 (Horry C.P. Apr. 19, 1982), Respondent defended its obstruction of Arcadian Drive and Beach Club Drive by offering operational explanations, including construction traffic, roadway safety, trash control, and landscaping. The court held that none of those reasons, even if proved, legally justified Respondent's obstruction of the private roadways. The court further found that owners who purchased lots with reference to the recorded Arcadian Shores plats possessed private easements in the streets shown thereon; it ordered removal of the obstructions and permanently enjoined Respondent, its agents, servants, and employees from interfering with or encroaching upon the streets and roadways shown on the subdivision maps. **[R. p. 3.]**

Haile does not finally decide every factual issue concerning the present configuration of the drainage system or the precise scope of reasonable temporary parking. It does establish an

important and directly relevant principle: Respondent may not defeat lot owners' established private roadway rights simply by asserting generalized operational, safety, or property-management concerns. The court rejected precisely that form of justification when Respondent invoked construction traffic and roadway safety to interfere with access along the same platted road system. **[R. pp. 2–3.]**

Respondent nevertheless advances the same essential theory here—contending at the hearing and in its brief that vehicle use near the beach-access area may damage, compromise, or destroy drainage infrastructure. **[R. pp. 594–595, 12–14.]** That assertion calls for competent, record-based proof and a narrowly tailored response; it does not convert an asserted infrastructure concern into authority to impose a blanket restraint, credential requirement, waiver, fee, or towing regime on owners claiming appurtenant roadway rights. The evidence that Respondent has permitted employees, vendors, subcontractors, rental-overflow vehicles, and paid outsiders to use or park in the area further creates a substantial question whether its claimed drainage justification is consistently applied and genuinely necessary. **[R. pp. 573–574.]**

Respondent has not retained a structural engineer or offered a structural-engineering report establishing that temporary parking by cars or golf carts near or on the drainage infrastructure is unsafe or that it will damage, compromise, or destroy that infrastructure **[R. pp. 594–595, 12–14.]** Its renewed drainage theory therefore rests on unsupported assertion rather than competent engineering evidence identifying the location, condition, load capacity, or actual vulnerability of the drainage system. A generalized concern, without such proof, does not erase Haile's injunction or resolve the present easement dispute. Nor does it establish that Respondent may unilaterally extinguish or burden Appellants' claimed access rights through blanket prohibitions, charges, waivers, or discriminatory enforcement. If an actual, supported safety concern is developed in the

record, it may be addressed through evidence-based, nonobstructive, and narrowly tailored measures concerning the location, conditions, and manner of temporary vehicle use.

Accordingly, the prior judgment and the present record require more than Respondent's renewed assertion of drainage risk. Before restricting the use of a platted beach-access roadway, Respondent must show both a legally cognizable basis for the restriction and that the particular measure is reasonably tailored to an actual, supported safety concern without unnecessarily interfering with the appurtenant rights recognized in Haile. The circuit court should not accept the same generalized rationale that Haile held insufficient as a justification for interference with these subdivision roadways. **[R. pp. 2–3.]**

II. The preliminary record presents a reasonable question concerning the plat-based easement and its reasonable incidental use.

Respondent argues the circuit court could deny relief because Appellants did not conclusively establish an express parking easement. That imposes the wrong burden. A preliminary-injunction movant "is not required to prove an absolute legal right," but must present a reasonable question concerning the existence of the right. AJG Holdings, LLC v. Dunn, 382 S.C. 43, 51, 674 S.E.2d 505, 509 (Ct. App. 2009). Once a prima facie showing is made, the court may preserve the claimed right without deciding the case's ultimate merits. Id. Appellants' evidence exceeded that threshold. The preliminary record showed:

1. The Developer recorded a subdivision plat depicting Arcadian Drive as a seventy-five-foot roadway extending toward the Atlantic Ocean **[R. pp. 30, 32, 554–555]**;

2. Appellants' lots were conveyed through deeds referencing the recorded subdivision plat **[R. p. 581]**;

3. South Carolina law presumptively recognizes a private implied easement when a deed incorporates a plat depicting streets or roads;

4. Affidavits addressed the road's design, developer intent, beach-access function, and historical use for temporary, non-obstructive parking **[R. pp. 559–561, 554–555, 566–570]**;

5. Subdivision owners used Arcadian Drive and its beach-access area over decades **[R. pp. 566–570, 2]**;

6. The 1982 Haile order recognized private easement rights of Arcadian Shores lot owners in the subdivision roads and enjoined obstruction of those roads **[R. p. 3]**; and

7. Respondent acquired the disputed property subject to easements of record [**R. pp. 456–457.]**

South Carolina's plat-easement rule is settled. When land is subdivided and lots are conveyed by reference to a recorded plat, purchasers acquire the easements, privileges, and advantages represented on that plat, including private rights in the depicted streets. Blue Ridge Realty Co. v. Williamson, 247 S.C. 112, 118–22, 145 S.E.2d 922, 924–26 (1965). More recently, the Supreme Court reaffirmed that a deed's reference to a plat depicting a road raises a presumption of an implied easement unless rebutted by a specific contrary intention. Gooldy v. Storage Center–Platt Springs, LLC, 422 S.C. 332, 338–46, 811 S.E.2d 779, 782–86 (2018).

Respondent's conveyance-chronology argument does not defeat the prima facie showing. Respondent emphasizes that its predecessor acquired the parcel before the 1982 corrective quitclaim deed containing express easement language. But Appellants do not rely solely on that later instrument to create the right. Their principal theory arises from the 1965 recorded subdivision plat and the Developer's sales of lots by reference to that plat **[R. p. 581.]**

The later deeds and the Haile order corroborate the subdivision's beach-access arrangement and historical treatment **[R. pp. 449–454, 2–3]**; they are not the exclusive source of the asserted easement.

Respondent also stresses that no recorded instrument uses the word "parking." That observation does not resolve whether limited parking is a reasonable incident of the access right shown by the plat, the road's dimensions and location, the parties' historical use, and the

subdivision's ocean-access purpose. The absence of an express term may create a merits question concerning scope. It does not erase the implied easement, the evidence of intended use, or the prima facie nature of Appellants' showing.

Nor does Xanadu assist Respondent merely because the dimensions of the easement there had been established. Xanadu confirms the substantive property principle that a servient owner cannot constrict a specifically located and dimensioned ingress-and-egress easement by placing obstructions within it. Xanadu Horizontal Property Regime v. Ocean Walk Horizontal Property Regime, 306 S.C. 170, 171–72, 410 S.E.2d 580, 581–82 (Ct. App. 1991). Here, the recorded plat depicts Arcadian Drive as a seventy-five-foot roadway, and Appellants presented evidence of fencing, signage, no-parking areas, towing threats, and conditions on use. **[R. pp. 554–555, 573–574.]** Whether each challenged measure ultimately constitutes unreasonable interference remains for adjudication; the evidence nevertheless presents a reasonable question warranting interim protection.

Finally, Respondent's reliance on the rule that an easement holder may not unreasonably burden the servient estate is not disputed. That rule is reciprocal. A dominant owner must exercise the easement reasonably, and a servient owner may use its property only so long as that use does not materially interfere with the easement's reasonable enjoyment. The existence of a reasonableness inquiry supports tailored temporary relief; it does not confer unilateral authority upon Respondent or justify treating its asserted reasons as dispositive before the scope and necessity of each restriction are examined.

III. Respondent's request to defer easement questions until trial confirms the need for provisional protection.

Respondent repeatedly urges that title, chain-of-title, scope, and reasonableness issues should await discovery and final adjudication. Appellants do not seek a final appellate declaration

resolving every easement question. They seek protection against continuing interference while those questions are litigated.

Temporary injunctions exist precisely because final adjudication has not yet occurred. A party cannot defeat interim protection merely by disputing the claimed right and insisting on trial. The pertinent question is whether the movant has made the preliminary showing required by Rule 65 and whether tailored protection is needed to preserve the subject matter.

The distinction is practical. Continued enforcement of unilateral waivers, credentials, charges, fencing, towing threats, and exclusions changes how the asserted property right may be exercised while the case is pending. **[R. pp. 573–575, 594–596.]** A final judgment years later cannot restore lost seasonal use, eliminate the coercive effect of recurring towing threats, or provide the access and enjoyment lost in the interim.

IV. The Circuit Court applied an unduly narrow view of irreparable harm and adequate legal remedies.

Respondent argues that no irreparable harm exists because Arcadian Drive remains physically open, other access is available, and Appellants may use the disputed area upon compliance with Respondent's procedures. **[R. p. 596.]** That analysis reduces the asserted property right to the bare ability to reach the ocean somehow and on conditions selected by the servient owner.

South Carolina law does not require total destruction of a property interest before temporary relief may issue. Transcontinental Gas Pipe Line Corp. v. Porter, 252 S.C. 478, 480–81, 167 S.E.2d 313, 314–15 (1969). And Blue Ridge confirms that alternative ingress and egress do not extinguish the lot owner's special property interest in a particular platted street. Blue Ridge, 247 S.C. at 121–22, 145 S.E.2d at 926.

The claimed injury is continuing and property-specific: compelled acquiescence in disputed conditions to exercise an asserted appurtenant right; restrictions on the physical area and manner of use; towing threats; refusal to recognize existing Association identification; and allocation of access capacity to paid outsiders. **[R. pp. 572–575, 594–596.]** The loss includes finite seasonal use, recurring uncertainty, and impairment of a claimed incident of real-property ownership. A later declaratory judgment cannot restore access and enjoyment lost while the case remains pending **[R. pp. 13–14.]**

Nor is a legal remedy adequate merely because it exists in theory. Damages might reimburse a particular tow or fee but do not readily value recurring impairment of a unique beach-access easement or prevent successive enforcement episodes. Equity considers practical efficacy, particularly when threatened acts may continue during the litigation. Columbia Broadcasting System, Inc. v. Custom Recording Co., 258 S.C. 465, 472–73, 189 S.E.2d 305, 309–10 (1972).

V. The challenged restrictions are not the status quo ante.

Respondent contends that its decal, application, waiver, fee, and restricted-parking procedures constitute the status quo because they predated the suit. **[R. pp. 608–609, 14.]** That approach lets a party establish the baseline by completing the very conduct the action challenges before judicial intervention can be sought.

The relevant status quo is the last peaceable, uncontested condition preceding the controversy. Poynter, 387 S.C. at 586, 694 S.E.2d at 17. The preliminary record identifies an earlier condition: decades of subdivision-owner use **[R. pp. 566–570, 2]**; judicial recognition of private road rights in Haile **[R. p. 3]**; and an Association identification system used from approximately 2000 through 2023. **[R. p. 158.]** Respondent's waiver, credential, fee, towing, and revised parking-control measures are the contested conduct—not a neutral baseline immune from interim review.

VI. *Howorka* does not authorize Respondent's fees and conditions; it demonstrates why recorded priority and express fee authority matter.

Respondent may invoke Howorka v. Harbor Island Owners' Association, Inc., 292 S.C. 381, 356 S.E.2d 433 (Ct. App. 1987), because that case upheld an association's access fees on a private roadway. Properly read, however, Howorka supports Appellants' demand that Respondent identify the recorded source, priority, and scope of its asserted fee authority.

The outcome in Howorka rested on a specific recorded declaration. Before the club's predecessor acquired its roadway easement, the developer recorded a declaration that expressly granted the association "exclusive management, operation and control" over designated common areas, expressly authorized reasonable rules and regulations, and expressly authorized "reasonable admission or other fees" for use of those common areas. Id. at 382–86, 356 S.E.2d at 434–36. The declaration specifically burdened the relevant portion of Harbor Drive, and the later easement holder had constructive notice of that prior recorded authority. Id. at 386–87, 356 S.E.2d at 436.

The priority sequence controlled the result. The association held a prior, perpetual, recorded easement of exclusive control. The club's predecessor received its access easement afterward and therefore acquired only a subordinate right consistent with the earlier declaration. Id. at 385–86, 356 S.E.2d at 435–36. The court did not hold that fee ownership alone includes an inherent power to charge an easement holder, nor that every association may impose admission fees merely by labeling them reasonable. **[R. pp. 581, 586–587]; [R. pp. 452–454.]**

That distinction is dispositive at the preliminary stage here. Respondent has not identified an earlier recorded declaration that: (1) burdens the disputed portion of Arcadian Drive; (2) grants Respondent a prior easement of exclusive management and control; (3) expressly authorizes admission, decal, permit, or access fees; and (4) predates the Arcadian Shores lot owners' plat-based rights. Instead, the present record supports the opposite chronology: OLIC recorded the

subdivision plat and conveyed residential lots by reference to the subdivision scheme before the June 1982 corrective deed, while the corrective instrument memorialized access, ingress, and egress rights without language authorizing Respondent to charge fees or demand waivers. **[R. pp. 581, 452–454.]**

Accordingly, Howorka supplies a useful limiting principle: fee authority must be found in the operative recorded instruments and evaluated according to priority. Where express prior authority existed, the later easement was subordinate. Where, as Appellants contend here, subdivision rights arose first and no earlier recorded instrument expressly grants Respondent exclusive control or fee power, Howorka does not authorize Respondent to convert those rights into paid permissions.

Howorka also reinforces the reciprocal noninterference rule. The court stated that an easement grantor retains dominion and use of the servient land only to the extent the grantor's actions do not interfere with the grantee's reasonable enjoyment. Id. at 386, 356 S.E.2d at 436. Applied here, Respondent's fee ownership permits concurrent use and reasonable, nonobstructive regulation; it does not answer whether waivers, charges, towing, fencing, and preferential licenses to outsiders materially interfere with Appellants' asserted senior rights. The contrast between Howorka and this record is therefore not peripheral. It exposes the missing link in Respondent's position: the recorded source and priority of the claimed power. At minimum, that unresolved issue creates a reasonable question supporting provisional protection.

VII. Van Blarcum and the plat authorities confirm that rights may arise from the recorded subdivision plan and severance, not solely from a later corrective deed.

Van Blarcum v. City of North Myrtle Beach, 337 S.C. 446, 451–52, 523 S.E.2d 486, 489–90 (Ct. App. 1999), recognizes the legal and evidentiary significance of the developer's plat, subdivision configuration, sales, and historical acceptance in a beachfront setting. Although Van

Blarcum concerns public dedication, Appellants invoke it for the limited proposition that Respondent cannot make the later corrective deed the sole temporal reference point while disregarding the earlier subdivision plan, lot sales, physical configuration, and historical use.

The governing private-right authorities are Blue Ridge, Carolina Land, and Gooldy. Under those authorities, plat-based easement rights arise, if at all, at the relevant severance. The later 1982 corrective deed and the Haile order are corroborative evidence of that asserted arrangement [R. pp. 452–454, 2–3, 581]; they need not be the exclusive source of every underlying private right. Gooldy, 422 S.C. at 338–44, 811 S.E.2d at 782–85.

Respondent's likely reliance on Corbin cannot change that result. Corbin affirmed the lot purchaser's private easement rights against the developer and its successors, while addressing separate limits on injunctive relief against a city acting through condemnation. Corbin, 229 S.C. at 29–32, 91 S.E.2d at 548–50. No comparable governmental condemnation is at issue here.

VIII. The recreational-use restriction and paid-outsider evidence support provisional scrutiny.

The evidence that Respondent sells annual parking privileges to persons outside Arcadian Shores is not collateral. **[R. pp. 573–574.]** It bears directly on the character, necessity, neutrality, and effect of Respondent's claimed regulatory system.

A servient owner may concurrently use its property but may not materially interfere with the easement's reasonable exercise. Murrells Inlet Corp. v. Ward, 378 S.C. 225, 662 S.E.2d 452 (Ct. App. 2008). A license sold to an outsider cannot displace a preexisting appurtenant right : **[R. pp. 573-574.]** The preliminary evidence permits an inference that Respondent allocated limited capacity to revenue-producing licensees while demanding additional conditions from owners asserting superior or earlier-created property rights. **[R. pp. 573–574.]**

The January 8, 1982 deed adds an independent question **[R. pp. 449–450.]** If the paid parking area falls within the property limited to recreational use for specified Arcadian Shores beneficiaries—or materially overlaps it—the commercial licensing of parking to outsiders raises a substantial question concerning Respondent's authority and the beneficiary limitation. **[R. pp. 449–450, 573–574.]** Appellants do not ask this Court to make a final boundary determination. They seek recognition that the restriction language and paid-outsider evidence warrant preservation and factual development rather than an assumption that commercialization is authorized.

IX. Paid outsider parking undermines Respondent's claimed necessity and neutrality.

The paid-outsider evidence also rebuts Respondent's claimed necessity. If parking over vulnerable infrastructure is unsafe, restrictions should follow the location and vehicle—not whether a user paid Respondent. If congestion requires limits, the system must account for the priority of qualifying dominant owners rather than prefer permissive outside licensees.

The record contains evidence that an identified Arcadian Shores owner's golf cart was towed at the beach-access point while Respondent sold annual parking privileges to outside property owners. **[R. pp. 573–574.]** At the preliminary stage, that evidence permits an inference inconsistent with Respondent's assertion that its system is neutral, uniform, and narrowly tailored. It also supports further examination of the authority, necessity, and burden of each asserted condition.

X. Continuing interference with an appurtenant property right is irreparable.

For the reasons stated in Section IV, continuing impairment of the asserted access easement constitutes irreparable harm for which a post-judgment remedy is inadequate. The injury includes loss of use during finite beach seasons, the compelled choice between accepting disputed conditions and risking exclusion or towing, preferential allocation to paid outsiders, and the

recurring burden on a claimed property right. **[R. pp. 573–575, 594–596.]** Blue Ridge confirms that alternative routes do not eliminate the special property interest in the particular platted street. Blue Ridge, 247 S.C. at 121–22, 145 S.E.2d at 926.

XI. The circuit court's separate balancing of equities was prejudicial legal error.

Respondent concedes Appellants are correct that Poynter eliminated a separate balancing-of-the-equities requirement. It nevertheless characterizes the circuit court's balancing determination as cumulative and harmless because the court also ruled against Appellants on the three governing elements **[R. pp. 13–14.]**

Rule 61, SCRCP, requires the reviewing court to disregard an error that does not affect substantial rights; conversely, an order may be disturbed where refusing relief would be inconsistent with substantial justice. Appellants therefore must show both legal error and prejudice—that the error reasonably could have affected the result. Fairchild v. Department of Transportation, 385 S.C. 344, 350–52, 683 S.E.2d 818, 821–22 (Ct. App. 2009). That showing is satisfied here.

The order's reasoning cannot be compartmentalized so neatly. The same mistaken premises infected every part of the analysis: (1) that Appellants sought unrestricted parking; (2) that Respondent's restrictions were neutral and reasonable; (3) that continued physical access upon compliance eliminated irreparable harm; (4) and that the operative status quo consisted of Respondent's recently imposed procedures. **[R. pp. 12–14.]**

The court then expressly concluded the equities favored Respondent because it sought to regulate its property to prevent overburden and physical damage. **[R. p. 14.]**

Poynter holds that balancing the equities is "neither necessary nor appropriate" as a separate preliminary-injunction requirement because the established three-part test already

delineates the burden and incorporates relevant equitable considerations. 387 S.C. at 587, 694 S.E.2d at 17.

Respondent is correct that a court may consider practical consequences when applying the proper elements. But the court may not add a distinct fourth hurdle or use that balancing determination to reinforce findings based on a mischaracterized right and disputed assumptions. The error was prejudicial because the improper framework changed the court's evaluation of the evidence under each governing element. On likelihood of success, the court treated the absence of the word "parking" as effectively dispositive rather than evaluating the plat, severance chronology, express access language, road width and design, and historical use. On irreparable harm, it treated access burdened by waiver, permit, payment, and towing exposure as legally equivalent to the unburdened exercise of the asserted appurtenant right. On status quo, it selected Respondent's disputed modern restrictions rather than the last peaceable condition reflected by historical subdivision-owner access and the Association identification system. **[R. pp. 12–14.]**

The error was prejudicial because the circuit court credited Respondent's interests as though Respondent's authority and Appellants' lack of parking rights had already been established. It accepted the asserted need for waivers, decals, fees, fencing, and restrictions without determining whether those measures were authorized, necessary, narrowly tailored, or less burdensome than the pre-dispute Association identification system. That was not merely an observation about practical consequences. It was an additional merits judgment favoring the servient owner at a stage when Appellants needed only to present a reasonable question concerning their property right.

At minimum, remand is necessary so the court may apply only the governing requirements, accurately identify the claimed right, determine the status quo ante, and evaluate whether tailored relief is reasonably necessary to protect that right pending final adjudication.

XII. Narrow interim relief preserves the parties' interests without deciding the merits.

Respondent presents a false choice between affirmance and an immediate declaration of unrestricted parking. Rule 65 permits relief tailored to the preliminary showing. An interim order may:

1. Prohibit exclusion or towing based solely on refusal to execute a broad liability waiver, pay a disputed access or credential charge, or submit to discretionary permission not grounded in a recorded instrument;

2. Require a reliable, nondiscretionary method to identify qualifying dominant-lot owners, residents, and legitimate invitees;

3. Preserve reasonable loading, unloading, pickup, and drop-off incidental to vehicular beach access;

4. Allow only temporary, nonexclusive, nonobstructive parking to the extent supported by the preliminary evidence and subject to reasonable time, traffic, emergency-access, and infrastructure protections;

5. Permit narrowly defined restrictions over specifically identified vulnerable infrastructure when supported by evidence and applied without regard to whether the vehicle belongs to an owner, outsider, staff member, contractor, or rental guest;

6. Prevent paid outside licensees from receiving priority over qualifying Arcadian Shores lot owners and legitimate invitees in any portion of the disputed area burdened by the asserted easements; and

7. Preserve the circuit court's authority to determine title, boundaries, scope, beneficiaries, and the validity of particular regulations after discovery and trial.

That relief would not decide the ultimate merits. It would preserve the claimed property interest and the parties' legitimate interests while preventing disputed fees, waivers, credentials, and paid licenses from determining the practical result before adjudication.

CONCLUSION

The organized conveyance evidence, recorded plat, plat-referenced sales, affidavits, historical-use evidence, and unequal-enforcement evidence materially strengthen Appellants' prima facie case. **[R. pp. 581, 452–454, 554–555, 559–561, 566–570, 573–575.]** Under Blue Ridge, Corbin, and Gooldy, qualifying plat-referenced conveyances may create private appurtenant rights at severance. The later corrective deed may confirm and preserve those rights without being their sole source.

Appellants did not seek unrestricted parking. They presented substantial record-supported questions whether Arcadian Shores lot owners possess platted-street easements for meaningful pedestrian and vehicular beach access; whether reasonable, temporary, nonobstructive parking is an incidental use; and whether Respondent may impose fees, waivers, credentials, towing consequences, and other conditions without prior recorded authority. Howorka does not resolve those questions for Respondent; it confirms that fee authority depends on the operative recorded instruments and priority.

Appellants respectfully request that this Court reverse the order denying temporary injunctive relief **[R. pp. 14, 16]** and remand with instructions to enter appropriately tailored interim relief preserving pedestrian and vehicular beach access; preventing denial based solely on disputed fees, waivers, or discretionary permission requirements; preventing preferential treatment of paid outside licensees over qualifying Arcadian Shores owners; and allowing demonstrably necessary, minimally burdensome safety and infrastructure measures.

Alternatively, Appellants request reversal and remand for reconsideration under the correct legal framework, including: (1) accurate characterization of the asserted right; (2) application of the reasonable-question and prima facie standard; (3) recognition that plat-based rights may arise at severance; (4) consideration of the conveyance chronology and confirmatory nature of the 1982 instruments; (5) consideration of paid-outsider parking and unequal enforcement; (6) property-specific analysis of irreparable harm and the adequacy of legal remedies; (7) identification of the true status quo ante; (8) examination of the source, necessity, and burden of each challenged condition; and (9) elimination of any separate balancing-of-the-equities requirement.

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable B. Alex Hyman, Circuit Court Judge

Appellate Case No. 2026-000666

R. Paul Benik, Jr., Rudolph Paul Benik, III, Paula W. Benik, Anton F.B.R. Poster, Sr. and Teresa L. Poster, Johann M. Mccrackin, Timothy J. Wentzel and Lisa D. Abrams, Sherry S. Weatherly, John D. Diehl and Lisa R. Diehl, Paul H. Errickson and Linda M. Errickson, Saundra Pridgen, Ronald K. Reynolds, V. Scott Miles, Vernon G. Miles, Sharon E. Miles, Deborah Floyd, Brooks M. Safrit, Woodrow S. Safrit, Steven Alan Speares and Sylvia Mccall Speares, Trustees of The Speares Revocable Trust u/a/d September 24, 2019, Steven P. Lombardi and Lisa A. Lombardi, Charles B. Hall, Virginia G. Hall, Sonia Heydt, Trustee of The Sonia Heydt Living Trust, dated December 10, 2024, Wendy Pivarnik, Joye S. Bull, Tumpie B. Bull, Maxine Williams, Trustee of The Maxine Williams Living Trust dated October 31, 2017, Kim Ritchie, Van Raye Ritchie, William B. Burch, Sharon K. Burch, Timothy G. Martin, Rebecca A. Harrington and Brian J. Martin, as Trustees of The Guy E. Martin and Ann M. Dozier Irrevocable Trust dated January 25, 2017, Miriam R. Cromer, Norwood Nicholson Cox and Janet Harrington Cox, Thomas P. Collins and Susan Lee Collins, Shawn Kelley and Karen Albert, and Jerry Steven Wilson and Dana Pridgen Wilson, Pama C. Free, Giovanni Carapelli, Julie A. Brooks, Jennifer Rae Morris, Craig L. Lambert and Lisa M. Lambert Henry Lawrence Sanderson, III, Trustee of The Henry Lawrence Sanderson, III Revocable Trust dated January 9, 2020, Ronald G. Brooks and Robin D. Brooks, Robert Christopher Jones and Melissa Coghill Jones, Darryl C. Williams and Mary Torrence Williams, David T. Taylor and Catherine T. Taylor, Samuel Deep and Dianne Deep, Natali D. Amaradasa, Rosemary Long Jenrette, and Arcadian Shores Single-Family Residential Homeowners Association, Inc..... Appellants,

v.

Arcadian Incorporated of Myrtle Beach,..... Respondent,

CERTIFICATE OF COMPLIANCE

I hereby certify that Appellants' Final Reply Brief complies with Rule 211(b), SCACR, and is identical to Appellants' Reply Brief previously served under Rule 208, SCACR, except for revisions to references to the Record on Appeal as permitted by Rule 211(b)(1), SCACR, and

corrections of obvious typographical errors and misspellings as permitted by Rule 211(b)(2), SCACR. No other changes have been made.

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