

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Benjamin H. Culbertson, Circuit Court Judge

Case No. 2009-CP-22-1045

John Steven Goodwin, Louise C. Goodwin, Thomas I. Puckett and Brenda C. Puckett, Robert Nahama and Jeanne E. Nahama, Thomas Holland and Sharon Louise Holland, Joyce K. Sobel, Robert W. Waruszewski, Richard N. Taylor, Robert K. Spillers (a/k/a Robert Spillers), and Deborah T. Spillers (a/k/a Deborah Spillers), Patrick A. DiAngelo and Deborah A. DiAngelo, Gary E. Owens and Joyce M. Owens, Fount L. Shults and Lynda M. Shults, Dennis Ridgeway and Teresa Lynn Ridgeway, Appellants,

v.

Landquest Development, LLC, Kyle V. Corkum, South Bay Properties, LLC, C.R. Thompson and Sons, LLC, Ronald L. Charlton, Bonnie N. Charlton, James R. Charlton and Bayside Property Inc., The City of Georgetown, Hartford Casualty Insurance Company, Hartford Fire Insurance Company, and National Land Sales, Inc., f/k/a Source One Communities, LLC, a/k/a Source One Signature Communities, Respondents.

**MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS APPEAL**

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SC Court of Appeals

The Respondent City of Georgetown ("City") has moved to dismiss the

Appellants' appeal on the basis that all claims alleged by the Appellants against the Respondent City are moot, and as a result, this Court lacks jurisdiction.¹

The Appellants' only cause of action against the City of Georgetown is the seventh cause of action as alleged in the Complaint. The Appellants seek only prospective relief against the City. Specifically, the Appellants pray for an order directing the City to call the Subdivision Performance Bond issued by the Respondent Hartford Fire Insurance Company as the surety. The Appellants also seek declaratory relief to the same effect. The record demonstrates the City has already taken such action. Thus, the Appellants' sole claim for prospective relief against the City is moot or otherwise not justiciable.

The South Carolina Supreme Court has explained that the Declaratory Judgments Act "has its limits." *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 593 S.E.2d 462, 466 (2004). "An adjudication that would not settle the legal rights of the parties would only be advisory in nature and, therefore, would be beyond the intended purpose and scope of the Uniform Declaratory Judgments Act." *Id.* "To state a cause of action under the Declaratory Judgment Act, a party must demonstrate a justiciable controversy." *Id.* "A justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial

¹ In accordance with Rule 208(b)(6), SCACR, the Respondent City of Georgetown adopts and incorporates herein, to the extent not inconsistent herewith, the arguments made by the Hartford Respondents in support of their Motion to Dismiss Appeal. The Respondent City further relies on the record presented to the Court by the Hartford Respondents, including copies of the pertinent documents attached to the Affidavit of Lawrence Hershon.

determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character." *Rainey v. Haley*, 404 S.C. 320, 745 S.E.2d 81, 87 (2013). Most importantly, "[a] declaratory judgment should not address moot or abstract matters." *Sunset Cay*, 593 S.E.2d at 466.

It is well settled that an appellate court lacks subject matter jurisdiction when there is no justiciable controversy between the parties. *Byrd v. Irmo High School*, 321 S.C. 426, 468 S.E.2d 861 (1996). When events occurring after the filing of an appeal render the appeal moot as to one or more parties, the appellate court lacks subject matter jurisdiction over that aspect of the appeal. *Id.*

In the case at bar, there is no longer any justiciable controversy between the Appellants and the Respondent City of Georgetown. The record reflects that the City took the action requested by the Appellants in their seventh cause of action: the City called the Subdivision Performance Bond with the surety, Hartford Fire Insurance Company. In addition, the City brought suit against Hartford and resolved that action by entering into an Agreement dated August 20, 2013.² That Agreement, a copy of which is an exhibit to the Hershon Affidavit, provides for Hartford, as the surety under the bond, to install and pay for the site infrastructure improvements covered by the bond. In accordance with that Agreement, Hartford has engaged a contractor and issued a Notice to Proceed under the Construction Contract. Work is presently ongoing.

² The Appellants' Notice of Appeal was served July 23, 2013.

The record thus reflects that the Appellants have received the very prospective relief that was sought in their only cause of action alleged against the City. The City called the bond, and as the obligee under the bond, the City entered into an agreement with the surety to install and pay for the site infrastructure covered by the bond. It is well settled that a party's receipt of the requested relief moots a claim. *See, Southeastern Housing Foundation v. Smith*, 380 S.C. 621, 670 S.E.2d 680, 684, n.2 (Ct. App. 2008); *Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 630 S.E.2d 474 (2006). The Appellants' claims have thus been rendered moot. There is no longer any case or controversy between the City and the Appellants, and for that reason, this Court lacks subject matter jurisdiction over this appeal as it applies to the City.

Based on the foregoing, the Respondent City of Georgetown requests that this Court dismiss the Appellants' appeal against the City.

Respectfully submitted,

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